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# **Regulations on Customer Protection of Virtual Currency Exchanges**

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# I. Introduction

# Introduction (1/3)

- Virtual Assets (VA): ‘Virtual assets’ as a legal term of ‘crypto currencies’ according to the definition of Financial Action Task Force (FATF).
  - \* Prepaid electronic payments (game items, Kakao Pay money, etc.), stocks, bills, and bill of lading (LC): Not VAs.
  - It is difficult to protect users because there is no definition of VAs and relevant regulations under domestic law.
- Virtual Asset Operators (VA operators): Sell, buy, exchange, store, manage, transfer, broker, and mediate VAs.
  - It is estimated that, in Korea, about 200 exchanges are in operation currently, including Bithumb and Upbit.
- Virtual Currency Exchange (VC exchange): Inadequate customer/user protection in loopholes of regulation and supervision, due to the (easy) business operation by reporting as a mail-order business
  - A person with a business registration certificate can report as a mail-order business, & easily establish a ‘VA exchange.’
  - ‘Similar reception behaviors’ such as Ponzi Schemes are prevalent in some exchanges, and fraud practices such as intentional market manipulation, misleading investors and siphoning off funds, are also frequent.
  - Concerns for increased damages from hacking into VC exchanges and the use of terrorist funds & money laundering

# Introduction (2/3)

## ■ Measures at the Government level

- 2017.12. Crackdown on illegal activities through government-wide inspection and regulation on VC markets through inspection on violations of consumer-related laws, electronic security checks, multi-level (pyramid) fund raising, similar reception acts, and unfair practices, etc.
- 2018.01. The Financial Services Commission (FSC) announced and revised the 「 Guidelines for Anti-Money Laundering Related to Virtual Currency 」 (2019.08)
- Several legislative bills and amendments submitted to the National Assembly
- 2020.03.17. Revised the 「 Amendment to the Special Financial Information Act 」 (“Amendment”);
- 2020.03.24. Legislated the 「 Financial Consumer Protection Act 」 (“Act”)
- Korea Financial Intelligence Unit (KoFIU): In the prepare of preparation of Enforcement Decree for the Amendment

## ■ The survey of 6 VC exchanges

- Registration Requirements: Having the necessary facilities, systems, human resources, and funds for operation and compensation, for a VC market.
- User protection measures are needed throughout the entire process from fund inflow to withdrawal after transaction close.

# Introduction (3/3)

- **Major countries are preparing regulations and taxation measures for VA dealers.**
  - The U.S. Securities and Exchange Commission (SEC) strengthened the application of securities trading regulations to VA assets (2019.11.16).
  - Japan is undergoing a regulatory overhaul, including changing the term of "virtual currency" as stipulated in the Fund Settlement Act to "crypto-assets."
- **In the joint declaration of the G20 Summit, the international community also declared that crypto-assets should be regulated in accordance with the standards of the Financial Action Task Force (FATF) (2018.12.1).**
  - The FATF integrated crypto-asset related contents in international standards for anti-money laundering (AML) (revised in 2018.10.19)
    - The decision to unify the terms mixed with virtual currency and crypto-assets into virtual assets.
    - Direct imposition of obligations for virtual asset service providers (VASP) (such as VA exchanges) to prevent money laundering and to ban terrorist financing, as an equivalent level to financial firms.
    - Adopting international standards and public statements regarding VA recommending cancellation of business licenses in the event of non-performance (2019.06).
- **From sustainability and effectiveness of current individual administrative action responses and partial reflection on Acts → A comprehensive review of foreign case analysis is required to organize Acts and to adjust the roles of each act, and to revise existing laws and regulations.**

## II. Current Status of Regulatory Oversight for User Protection

# 1. User Damage Types (1/2)

- **The company operates by reporting the mail-order business, and lacks transparency and user protection measures**
  - Virtual currency (VC): An unfamiliar concept that is difficult to define under existing laws.
  - The VC market has been expanding rapidly since 2017, and the government is running out of time to respond.
  - Two contrary considerations delayed the user protection : (1) Concerns that the enforcement of government regulations itself could be perceived as an institutionalization of VC, which could lead to overheating, and (2) considerations that block chain technology, which is a based technology for VC, should be promoted.
- **Under the loopholes in regulations and supervision, the fluctuation of VC price, deceptive trading practices, and various accidents frequently caused damages to users.**
  - Prevalence of illegal acts: Hacking the exchanges; delaying/refusing the withdrawal of deposits; misappropriated/embezzled funds by transferring the deposit to the corporate accounts of the exchanges; server-downs due to lack of facilities; and price manipulation by executives and employees of the exchange
  - not only damage caused by system problems and moral hazard of the exchanges, but also similar reception and multi-level pyramid funding caused enormous damages by fraud



# 1. User Damage Types (2/2)

## User Damage Cases Related to Virtual Currency

**Case 1)** Transfer of user funds to a corporate account of exchanges without permission (KBS News, 2018.2.20.)

**Case 2)** Stolen user coins and leakage of information due to hacking (Financial Services Commission, 2017).

**Case 3)** Delay or refusal of deposit withdrawal by exchanges (Yeonhap News, 2019.1.17)

**Case 4)** Exaggeration of the exchange status by inflating the transaction volumes or the number of users by disguising employees as ordinary members (Yeonhap News, 2018.12.21)

**Case 5)** Trade without secured wallets for coin types or individual users (Yeonhap News, 2018.1.28).

## 2. Major Measures in Government

- **In December 2017, the government inspected and regulated the virtual currency market at the pan-government level.**
  - Crackdown on illegal acts surrounding the virtual currency market, such as an investigation into consumer-related violations, computer security checks, multi-level (pyramid) fundraising, similar acts of receiving, fraudulent virtual currency sales or brokerage, and unfair practices

### Key contents of the anti-money laundering guideline related to virtual currency

- **The Financial Services Commission prepares countermeasures by focusing on money laundering, which highlights international cooperation issues.**
  - Announcement of the "Guideline for Money Laundering Related to Virtual Currency" at 01. 2018.08. Implementing the revision.
  - Conduct an inspection of virtual currency transaction real-name system and corporate account\* of the handling business by the guidelines.
    - \* Prevent user funds from being transferred to the corporate account of the handling business and then transferred to the employee account of the handling business.
  - 'weakness related to AML/CFT' and countermeasures through future legislation' of crypto-assets  
Announcement (2018.11.27)
    - \* anonymity of transactions, failure to implement AML/CFT related to crypto-asset handling businesses, etc.
  - The focus is on preventing money laundering.
  - User funds from virtual currency exchanges are misappropriated or embezzled, which needs to be checked in advance.

### 3. Legislative Efforts (1/2)

- **Currently, virtual currency dealers can operate by merely reporting to meet the requirements of the mail-order business.**
  - Among the numerous companies registered as telecommunication businesses\*, it is difficult to identify which of them is a virtual currency handling business, and effective regulation has not been implemented.
    - \* As of the end of 2018.6, 601,652 companies were operating in the mail-order business; of these, about 200 are estimated to handle virtual currencies.
  - Accordingly, legislation is being pushed to protect users and foster related industries by explicitly defining virtual currency markets, such as virtual currency handling businesses, and strictly supervising them like the financial system.
- **2019. Kim Byung-wook's Special Financial Information Act**
  - Among the 12 proposed amendments to the Special Financial Information Act, it is said best reflect international trends such as FATF and G20
  - Financial Intelligence Unit (FIU) may receive tax information from the National Tax Service to track money laundering

### 3. Legislative Efforts (2/2)

- 2020.03.17 The Financial Consumer Protection Act and the Special Financial Information Act passed by the National Assembly.

#### Main Contents of the Financial Consumer Protection Act and Special Financial Information Act

**Special Financial Information Act:** Financial consumer protection act is based on the international standards of the Financial Action Task Force (FATF) for gambling, drugs, etc. The amendment amended the existing law's 'financial transaction' to 'financial transaction, etc.', adding to the encoding currency.

**Financial Consumer Protection Act:** The expansion of consumer options and the incapacitation of the dispute settlement system through the raising of small businesses by financial companies, and the level of prior regulation and sanctions against financial companies has been strengthened.

# III. Survey of Virtual Currency Exchanges

# 1. Overview of the Exchanges in Survey (1/6)

	A.	B.	C.	D.	E	F
Currencies On sale	- 5 Markets - 64 Currencies listed	- 2 Markets - 347   Currencies listed	- 2 Markets - 300 Currencies listed	- 4 Markets - 24 Currencies listed (KRW Market: X)	- 3 Markets - 307   Currencies listed	- Service Unavailable
Self Coin Issuance	- Huobi Coin (HT) - Coins are listed on other exchanges and may use externally	X	- Bitsonic Coin (Plans to expand its usage) - Exchange coin market: None	- Yes - Exchange coin market: Nexybit	X	X
Account Form	Corporate account	Virtual account (Nonghyup)	Virtual account (Shinhan)	Virtual account (in foreign country)	Corporate account (Shinhan)	Corporate account
Virtual Account		- Create account number by user	- There are difficulties in operating corporate accounts. - The bank is also negative about the creation and use of corporate accounts which makes the situation harder.	- Exchange market that has been issued with virtual accounts (in foreign countries) → The exchange has been sold to GBC Korea, an M&A platform based on Blockchain on 2019.05.21.	- Shinhan Bank has taken due diligence to issue virtual accounts since early 2017, but the exchange failed. - The recent blockage of corporate accounts on the exchange -> caused by AML or due diligence.	

# 1. Overview of the Exchanges in Survey (2/6)

- **The government implements a real-name virtual currency transaction system for users who want virtual currency transactions.**
  - The funds are deposited in separate bank accounts (real name verification deposit and withdrawal accounts) where their real names have been confirmed, and the funds are transferred to corporate accounts (collect accounts) of the handling business.
    - Due to the discovery of several transfers from collection accounts to non-collective accounts at handling establishments, the inspection of non-collective accounts by banks has also been strengthened since June 2018.
- **Only two out of six exchanges have secured a real-name verification deposit and withdrawal account system.**
  - Banks need to be careful about handling accounts due to the burden of work and post-responsibility problems imposed when setting up real name verification accounts.

## Holding a virtual currency account (Summary of Survey Response)

Company A	Company B	Company C	Company D	Company E	Company F
-	- Creating account numbers by user (Bithumb-Nonghyup, Korbit-Shinhan, Upbit-IBK)	- Bank's negative response to the creation and use of corporate accounts	- Currently, there are four handling businesses that have been issued virtual accounts.	- Application for virtual account is not allowed after due diligence has been passed	-

# 1. Overview of the Exchanges in Survey (2/6)

- **Virtual account/real name account: Four forms of the current Cryptocurrency Exchange**
  1. Four exchanges being issued virtual accounts (real-name accounts)
    - \* Upbit: IBK-Existing Membership/New Members-K-Bank; \* Bithumb: Nonghyup;
    - \* Korbit-Shinhan/Currently account has suspended; \* Coinone-Nonghyup
  2. Exchanges being issued with corporate accounts;
  3. Mining-type exchanges being issued with corporate accounts.
  4. Exchanges even without being issued a corporate account
- **Only two out of six exchanges have secured a real-name verification deposit and withdrawal account system (cont.)**
  - After implementing the real-name transaction system for cryptocurrency under the 2018.01 Financial Services Authority's Guidelines on the Prevention of Virtual Currency Money Laundering, most of them are used as honeycomb accounts\* using corporate accounts.
    - \* Honeycomb account: It is pointed out that investors' money comes and goes from one corporate account to another by dividing corporate accounts internally into multiple traders' personal accounts, and that separate books manage individual investors' assets, so the investor's account classification is unclear and financial transactions are entirely entrusted to the exchange, which does not help protect investors (blockinpress, 2019.03.15).



# 1. Overview of the Exchanges in Survey (3/6)

- **Virtual Currency Transaction Real Name System (2018.01): Re-signing a real-name account on the Virtual Currency Exchange (Yeonhap News, 2019.07.30)**
  - [8 items due diligence?] Identity of users; separation of company property and customer deposit accounts; management of transaction details by users; inspection of compliance with the government's virtual currency-related policies.
- **The polarization of virtual currency exchanges due to tightened regulations: difficulty in corporate accounts**
  - Legally, virtual and corporate accounts are equal in its function;
  - **It is assumed that the exchanges who did not get the real accounts failed to pass due diligence such as AML.**
  - Bank/investors' negative perception of corporate account creation and use
    - \* Virtual accounts are divided into sections by the bank.
    - \* Corporate accounts are divided into internal systems.

# 1. Overview of the Exchanges in Survey (4/6)

- **Only two out of six exchanges have secured a real-name verification deposit and withdrawal account system (cont.)**
  - Immediately after the real-name transaction system was introduced, the issuance of new virtual accounts on the virtual currency exchange was suspended, and the existing Upbit, Bithumb, Coinone, and Korbit formed a semi-final system (Digital Times, 2018.02.27).

**Four (4) VC Exchanges with Real-name Accounts**

	Upbit	Bithumb	Coinone	Korbit
<b>Date of establishment</b>	2017 October	2014 January	2014 August	2013 July
<b>Largest shareholder</b>	Song Chi-hyung, Representative of Dunamu (equity ratio 31.00%)	XCP (equity ratio 76%)	Dayli Financial Group (equity ratio 75%)	NXC (Nexon Holding Company) (equity ratio 65.19%)
<b>CEO</b>	Lee Suk Woo	Kim Jae-wook, Jeon Soo- yong	Cha Myung Hoon	Yoo Young Suk
<b>Coin trading volume</b>	More than 7% of the world's trading volume, 4 <sup>th</sup> rank in the world	More than 6% of the world's trading volume, 6 <sup>th</sup> rank in the world	0.9% of global trading volume, 17 <sup>th</sup> in the world	0.4% of global trading volume, 25 <sup>th</sup> in the world

Data: Coin Hills, collected from each company

# 1. Overview of the Exchanges in Survey (5/6)

- **Only two out of six exchanges have secured a real-name verification deposit and withdrawal account system (cont.)**
  - Bithumb, one of the four major virtual currency exchanges, will also have a one-month grace period with Shinhan Bank to renew the contract through further negotiations (Money Today, 2018.08.29).
    - Bithumb have pointed out that investor protection is insufficient, as 31,000 members' information was leaked through the 2017.06 hacking, and 35 billion won worth of virtual currency was stolen through the 2018.06 hacking.
    - Insufficient investor protection measures, such as requiring interest on the government and banks' demand for separate storage of investor assets for consumer protection.
    - Risk of discontinuing real-name verification virtual account service for virtual currency transactions due to Nonghyup's refusal to renew the contract
    - Upbeat re-signed with IBK; Coinone and Korbit re-signed with Nong Hyup Bank and Shinhan Bank, respectively.

# 1. Overview of the Exchanges in Survey (6/6)

- **Only two out of six exchanges have secured a virtual account, a real-name verification deposit and withdrawal account system (cont.)**
  - Exchanges that have not been issued virtual accounts are in a crisis due to the suspension of trading, and coin transactions (P2P) are activated.
    - 2018.01. Start operation of 'P2P Coining' on the virtual currency exchange.

## Interruption in Trade (Summary of Survey Response)

Company A	Company B	Company C	Company D	Company E	Company F
-	<ul style="list-style-type: none"><li>- Established internal policies</li><li>- Notice 24 hours before the suspension of the transaction</li></ul>	<ul style="list-style-type: none"><li>- Absence of internal policy</li><li>- Stop trading in the event of a system problem (notify)</li><li>- Different systems for suspension of transactions and withdrawal and remittance</li></ul>	-	<ul style="list-style-type: none"><li>- Absence of internal policy</li></ul>	<ul style="list-style-type: none"><li>- Establishing internal policies</li><li>- If transaction is suspended, deposit and withdrawal are suspended together.</li></ul>

## 2. Services in Provision

### Services in Provision (Summary of Survey Response)

Company A	Company B	Company C	
<ul style="list-style-type: none"> <li>- Exchange Service</li> <li>- Considering business diversification (Cryptocurrency Meetup Cafe)</li> <li>--</li> <li>- Service completeness</li> <li>* Provide services such as Kakao Talk account link, such as Upbit.</li> <li>* Include parts such as UX and UI as a whole</li> </ul>	<ul style="list-style-type: none"> <li>- Exchange Service</li> <li>--</li> <li>- Overall service and marketing</li> </ul>	<ul style="list-style-type: none"> <li>- Exchange Service</li> <li>-Open Market Service: * Exchange that simplifies the listing process. Due to the complicated and difficult process of listing on the exchange, trading is possible if the basic requirements are met through the open market.</li> <li>-If there is no fixed unit (similar to the stock market) but there is a deposit system that causes the coin to collapse, the deposit will be paid to the buyer of the coin if the transaction consumer is found to have suffered damage (notify the consumer that it is a high-risk transaction).</li> <li>- C2C service</li> <li>* Provides escrow function to enable direct inter-consumer transactions.</li> <li>* Function like OTC (similar to over-the-counter transactions/over-the-counter transactions in the foreign exchange market).</li> <li>-Cryptocurrency Shop Service</li> <li>- Provide purchase documents in crypto currency</li> </ul>	
Company D	Company E	Company F	
<ul style="list-style-type: none"> <li>Exchange Service</li> <li>- futures trading service</li> <li>--</li> <li>- Exchange has a customer appeal process:</li> <li>- UI, liquidity fees, liquidity listed, liquidity and so on.</li> <li>Higher liquidity - particularly important : (liquidity) quality of the coin - on customers time by many possible amount of money buying and selling a password.</li> </ul>	<ul style="list-style-type: none"> <li>- Exchange Service</li> <li>--</li> <li>-Long-term perspective: users today and future will be different</li> <li>-The current users are single-handed users, so there is no merit.</li> <li>-Connectivity to Blockchain</li> <li>- Presently, the biggest weapon of price control.</li> <li>- Currently, most of our customers are protecting funds due to transparency in the operation of the exchange.</li> </ul>	<ul style="list-style-type: none"> <li>- Exchange Service</li> <li>--</li> <li>-Fee policy</li> <li>-The worst policy the exchange can do is to cut fees.</li> <li>- Changes internally tailored to the market environment through rapid decision-making</li> </ul>	

### 3. Fees and Income

- The survey found that the fee is generally applied to fixed commission rates, but it seems that many different contents have not been disclosed to each handling business.
  - Exchanges may apply different commission rates to Make/Take according to the transaction levels.
  - There were also two exchanges that offered to charge for listing

#### Fee Policy and Main Income (Summary of Survey Response)

	Company A	Company B	Company C	Company D	Company E	Company F
<b>Main Income</b>	- Fee	- Fee	- Fees (based on trading volume) - 90% commission is allocated to customers with bitsonic coins - Listing fee	- Fee - Listing fee	- Fee	- Fee
<b>Fee</b>	- Fixed commission rate - Dependent on the price of the crypto - Announcement on homepage when changes occur	- Fixed commission rate - Dependent on the price of the crypto - Announcement on homepage when changes occur	- Maker taker/ fee difference by grade - Different fee policies by selecting VIPs based on monthly transaction volume -Half of the fee is provided when paying fees with their own coins.	-	- Twice in terms of operation (not for revenue) - withdrawal transaction fee * The withdrawal fee must change due to the nature of the industry.	-

## 4. Internal Transaction

### Internal Transaction (Summary of Survey Response)

Company A	Company B	Company C	Company D	Company E	Company F
<ul style="list-style-type: none"><li>- Encourage employees to voluntarily report when they participate in transactions</li><li>- Not monitoring each individual.</li></ul>	<ul style="list-style-type: none"><li>- No internal transaction problems exist except for new listing.</li><li>- Restrictions on transactions to internal executives and employees (ethics regulations)</li></ul>	<ul style="list-style-type: none"><li>- Internal employees of the exchange are advised to refrain from using the exchange</li><li>- No regulations.</li><li>- Regulations for reward and punishment are not prepared when checking the usage status of internal employees on the exchange.</li><li>- Recognize the need for regulations</li></ul>	<ul style="list-style-type: none"><li>-</li></ul>	<ul style="list-style-type: none"><li>- No one is allowed.</li></ul> <p>(Internal prohibition regulation, existence of punishment regulation)</p> <ul style="list-style-type: none"><li>- Refer to the Japanese regulations when making internal regulations</li></ul> <p>(Representative Park Yong-jin's proposal &lt; Gopax Regulation &lt; Japan)</p> <p>Security Regulatory Data (scheduled for delivery)</p>	<ul style="list-style-type: none"><li>- Presence of regulation book</li><li>- There are no internal transaction-related policies, but they exist to the degree of discipline.</li></ul>

## 5. Deposit Management

- **No specific response to the management of virtual currency purchased by the user, such as storage, etc.**
    - It is assumed that virtual currency purchased and stored by the user should be kept in a separate wallet (cold wallet) separately from the Internet of the handling business, but not in many cases.
      - Depending on the exchanges, the terms and conditions are included\* rather than establishing the relevant system.
- \* "The virtual currency exchange terms and conditions that are not responsible for hacking" (Hankyoreh, 2018.1.28)

### Management of User Assets/Deposits (Summary of Survey Response)

Company A	Company B	Company C	Company D	Company E	Company F
-	<ul style="list-style-type: none"><li>- Storing deposits in the bank</li><li>- Not only customers but also businesses that deal with deposits cannot be accessed</li></ul>	<ul style="list-style-type: none"><li>- Separated into individual/corporate accounts and operated</li><li>- The amount of coins purchased is tied to the coins and deposited with the won in the customer account.</li><li>- Fees and listed expenses are deposited into corporate accounts</li></ul>	<ul style="list-style-type: none"><li>- Deposit</li></ul>	<ul style="list-style-type: none"><li>- Account is in isolation operation.</li><li>- Additional data is scheduled to be sent</li></ul>	<ul style="list-style-type: none"><li>- Separate management of customer deposits</li></ul>



## 6. Security and Audit (1/2)

### Security & External Audit (Summary of Survey Response)

	Company A	Company B	Company C	Company D	Company E	Company F
<b>Accounting and security external audits</b>	<ul style="list-style-type: none"> <li>- External audit should be carried out if necessary.</li> <li>- The details of the audit are not disclosed to the public</li> </ul>	<ul style="list-style-type: none"> <li>- Received accounting and security audit</li> <li>- Accounting: Accounting firm</li> <li>- Security: Passed ISMS Criteria</li> </ul>	<ul style="list-style-type: none"> <li>- Delegate audit reports to accounting firms</li> </ul>	-	<ul style="list-style-type: none"> <li>- KISA ISMS certification through KISA, banks, Blockchain Association, and self-regulatory review</li> </ul>	<ul style="list-style-type: none"> <li>- Received due diligence</li> </ul>
<b>Security policy</b>	<ul style="list-style-type: none"> <li>- Confidential.</li> <li>- Each company's competitiveness in security systems, security policies, and operational policies</li> <li>-ISMS Certified Company</li> </ul>		<ul style="list-style-type: none"> <li>- Preparing for ISMS authentication</li> <li>- Security for wallets is an important key, and efforts are made to use the system used by the wallet management department to utilize the company's system with high security.</li> </ul>	<ul style="list-style-type: none"> <li>- Doesn't seem to care about security due to current situation...</li> </ul>	<ul style="list-style-type: none"> <li>- ISMS authentication</li> </ul>	<ul style="list-style-type: none"> <li>- Preparing for ISMS certification</li> <li>- Established a level of security system for banking and business.</li> </ul>
<b>Operating hours</b>	-	<ul style="list-style-type: none"> <li>- 24-hour system operation</li> <li>- Hotline operation in case of a problem (regular workforce X)</li> </ul>	<ul style="list-style-type: none"> <li>- 24-hour trading system operation</li> <li>- Hotline operation in case of a problem. Always-on Staff X</li> </ul>	-	<ul style="list-style-type: none"> <li>- 24-hour trading system operation</li> <li>- Hotline operation in case of a problem. Always-on Staff X</li> </ul>	<ul style="list-style-type: none"> <li>- System operation to 24 hours.</li> <li>- 3-5 human workforce in 24 operation hours.</li> </ul>
<b>Suspension of trade</b>	-	<ul style="list-style-type: none"> <li>- Establishing internal policies</li> <li>- Notice 24 hours prior to discontinuance of transaction</li> </ul>	<ul style="list-style-type: none"> <li>- Internal policy in place.</li> <li>- In the event of a system problem, the transaction is often suspended.</li> <li>- No transaction delay has ever occurred.</li> <li>- Binance and BTC are connected, if there is a systematic check, check after the entire transaction is aborted.</li> <li>- Announcement through site pop-up</li> <li>- You can use a separate system to stop trading and to deposit and withdraw and remit money from a crypto.</li> </ul>	-	<ul style="list-style-type: none"> <li>- No internal policy</li> </ul>	<ul style="list-style-type: none"> <li>- Internal policies are in place.</li> <li>- In the event of a suspension of transactions, deposits and withdrawals are suspended together.</li> </ul>

## 6. Security and Audit (2/2)

- **The government inspected the site status of the virtual currency handling businesses from January 2017 to December and took measures to strengthen security. A situation in which visible results are insufficient even though\* has been implemented**

\* As a result of inspecting ten (10) handling businesses for administrative and technical security measures, such as installation and operation of access control devices and encryption of personal information, the government imposes administrative measures such as fines and fines for violations of laws and regulations and recommends continuous improvement of security vulnerabilities. (Government, follow-up measures to the Virtual Currency Emergency Measures (12.13), 2017.120.)

- Few of the six virtual currency dealers surveyed correctly responded to security-related and security external audits
  - Only two out of six (A-F) handling businesses have been certified as Information Security Management System (ISMS) or Personal Information Protection Management System (PIMS) required by the government in the measures taken from January 2017 to December.
  - Two out of six businesses are audited externally, and one is audited selectively, so the security audit is insufficient compared to the audit.

## 7. User Damage Compensation

- **Handler's perception of user damage compensation due to hacking is still low**
  - None of the six handling businesses surveyed have secured compensation plans and funds related to user damage, and two have insurance policies related to personal information protection.
    - \* Hacking-related insurance products are not available on the market
  - Company C only allows withdrawals 100 hours after the user's deposit in preparation for voice phishing, but this restricts the user's withdrawal and does not provide any compensation in case of damage.

Summary of survey responses related to user damage compensation

Company A	Company B	Company C	Company D	Company E	Company F
<ul style="list-style-type: none"><li>- Enrollment of privacy insurance</li><li>- Hacking related items are not on the market</li><li>- Unlike other establishments, efforts are made to compensate for the damage. (Keeping 20,000 BTCs for damage compensation)</li></ul>	<ul style="list-style-type: none"><li>- No special internal system</li><li>- Have done damage compensation before.</li></ul>	<ul style="list-style-type: none"><li>- Introduction of a withdrawal system related to voice phishing problems</li><li>- Withdrawals can be made 100 hours after deposit</li></ul>	-	<ul style="list-style-type: none"><li>- Enrollment of privacy insurance</li></ul>	<ul style="list-style-type: none"><li>- Prepared personal information protection insurance</li><li>- No deposit insurance</li></ul>

# **IV. Regulation & Supervision Measures for User Protection**

# 1. Introduction (1/2)

- **Systematic and advanced supervision and regulation of the virtual currency market, including the protection of virtual currency users, need to be established through the revision of relevant laws as soon as possible.**
  - The sustainability and effectiveness of the current individual administrative actions are questionable.
    - \* The government tried to ban the operation of corporate accounts (honeycomb accounts) of dealing businesses by introducing a real-name virtual currency transaction system in January 2018. But honeycomb accounts are still prevalent as the format of the announcement is only a guideline with a weak legal basis. 2018. October 2018 In an injunction against honeycomb accounts, the handling business won the bank, and the hive account expanded rather than ([Report] The revision of the Special Financial Transaction Information Act on Honeycomb Accounts on the Exchange, eDaily, 2019.3.28)
- **If the government wants to revive the fourth industrial revolution, including discussions on the revision of the special law, it is urgent to supplement it.**
  - Virtual assets, virtual asset handling businesses, virtual asset trading concepts defined in the revision of the Special Financial Information Act include broader and stronger regulations than the FTAF.
  - It should be reviewed from the perspective of national economic development, such as the contraction of new technology industries, by raising the barriers to industrial entry and excessively regulating the virtual asset industry itself.

# 1. Introduction (2/2)

- **Types of regulations for virtual asset transactions and virtual capital industries by country**
  1. Countries introducing separate regulatory regimes: [The US, Japan, and Germany](#)
  2. Countries undergoing regulatory changes at the recommendation of the FATF:  
[Australia, France, Hong Kong, Singapore, Russia, South Korea](#)
  3. Countries undergoing regulatory transition and previously taxed: [The UK, Finland](#)
  4. Countries that prohibit trade: [China](#)
- **Basel Committee on Banking Supervision (BCBS ) Response to Crypto-Assets**

## 2. User Protection Measures in Major Countries

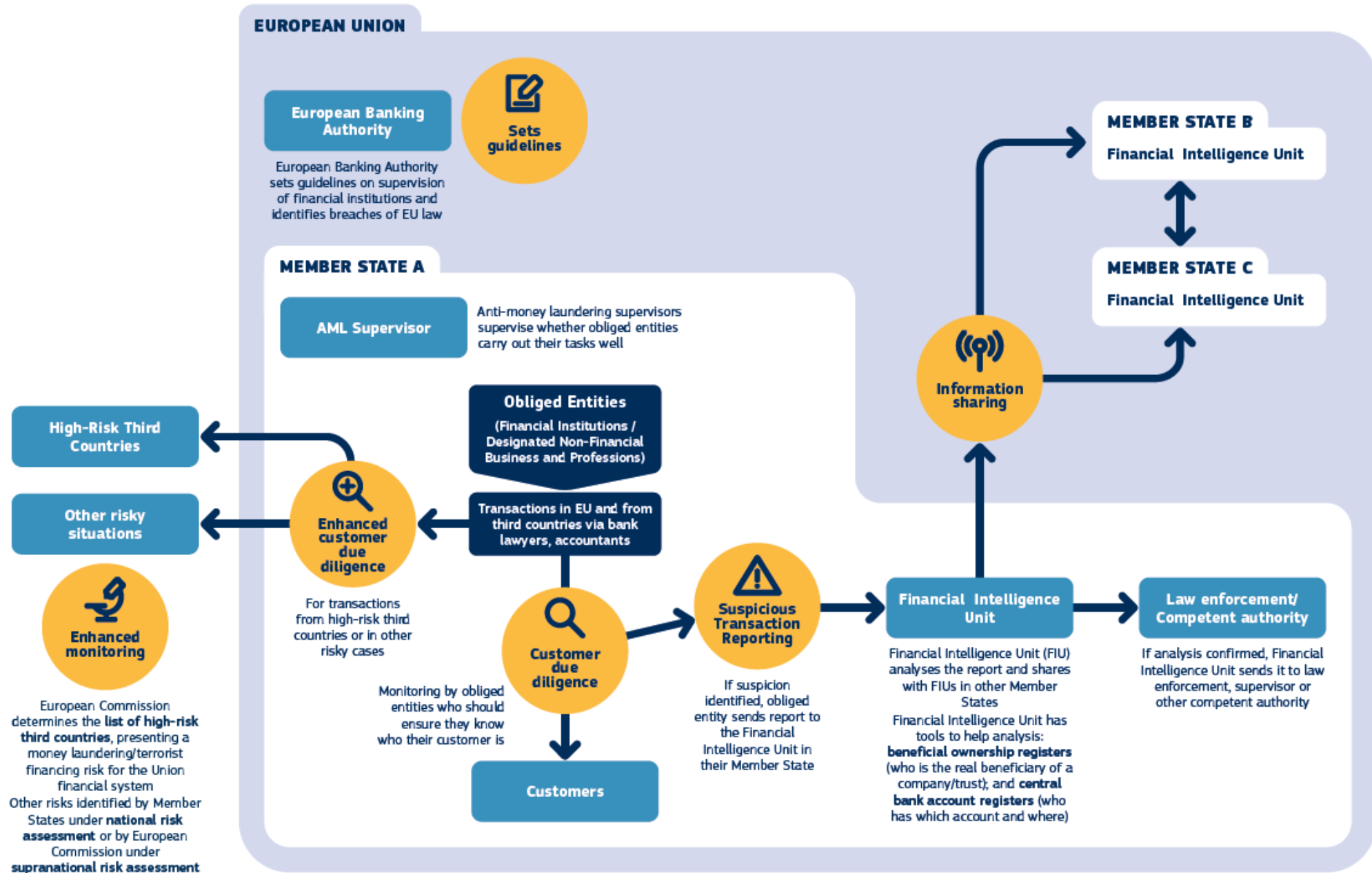
- Major advanced countries such as the United States, Japan, and Germany have already legislated to protect users and utilize the virtual currency market to promote virtual currency-based technologies.
- In terms of user protection, each country is required to complete security and transaction system through registration requirements while regulating transaction records reporting/preservation, information provision, separation of user assets and handling businesses, and fee system in common.
- Establish procedures for resolving consumer disputes, internal control systems of the handling business, etc.

	Applicable Act	Key Contents of User Protection
<b>New York, United States</b>	New York Bank Act	<ul style="list-style-type: none"><li>- Compliance supervisor, compliance report, and advertisement regulation</li><li>- Report the transaction records. Preservation, provision of information (risk, fee, etc.)</li><li>- Establishing a security program, designating an information security officer</li><li>- Separate management of user assets</li></ul>
<b>Japan</b>	Fund Settlement Act	<ul style="list-style-type: none"><li>- No lending in name.</li><li>- User's personal information and system safety management</li><li>- Information provision (risk, commission, etc.)</li><li>- Separate management of user assets and preparation of dispute resolution measures</li></ul>
<b>Germany</b>	Banking law	<ul style="list-style-type: none"><li>- Protection equivalent to bank users through supervisory agencies</li></ul>

Source: Ahn, Soo-hyun (2018). "Policy Plan for Domestic and Foreign Cryptocurrency Management and Consumer Protection,"

# Preventing money laundering and terrorist financing across the EU

How does it work in practice?





# Three (3) Most Important AML Compliance Laws in 2020 (1/2)

- **The Financial Action Task Force (FATF)**

- Purpose: to prevent money laundering and terrorist financing
- Has 39 members of major regions of the world and FATF acts as a global regulator
- Publishes AML guidelines to countries and firms
- FATF recommendations
  - Applying a risk-based approach
  - Customer due diligence
  - Record keeping
  - Politically exposed person controls
  - Reporting of suspicious transactions

- **The EU – fifth anti-money laundering directives (AMLD5)**

- Applies to all legal entities operating in European Union
- Customers must be verified before the EU member states establish a business relationship with the client
- Companies should determine their client risk level by PEP lists
- AMLD5 also includes AML obligations of casinos

# Three (3) Most Important AML Compliance Laws in 2020 (2/2)

- **The bank secrecy act (BSA)**

- United States' regulation to combat financial crimes
- Administered by the Financial Crimes Enforcement Network (Fincen)
- Financial institutions must keep their detailed records of client's identities and transactions
- Financial institutions must submit three reports:
  1. **Currency transactions reports:** recording clients who make more than \$10,000 cash transactions within one business day
  2. **Suspicious activity reports:** recording any suspicious transactions during AML checks
  3. **Foreign bank account reports (FBAR):** US citizens are obligatory to submit a FBAR to US Treasury each year or "foreign financial accounts" with a total value of \$10,000

Source: Sanction Scanner (2020)

## 2-1. Measures in the US (1/2)

- **No federal legislation on crypto-asset handling.**
- **2015.06. New York State Revised Financial Supervisory Regulations Introducing BitLicense for Cryptographic Industry**
  - Handlers of crypto-assets need to acquire Bit License: must meet minimum capital requirements and hold capital in cash and as a high-mobility asset for financial soundness and business continuity
  - For consumer protection, a crypto-asset handler is obliged to notify users of risks and contract conditions related to crypto-assets and to prepare measures to protect users throughout the entire process, from the inflow of funds to withdrawal after the transaction is closed.
  - State regulators supervise the financial situation, business activities, management policies, and compliance of crypto-asset handlers if necessary.
  - Cryptocurrency asset handlers should identify customers (KYC) to prevent money laundering and terrorist funds from being used and report the list of customers who remitted more than \$10,000 a day to the regulators within 24 hours.
- **2015.09 The Conference of State Bank Supervisors (CSBS) prepares a standard regulatory framework for crypto-assets that can be used by states as guidelines (after the revision of financial regulations in New York)**
  - \* State Regulatory Requirements for Virtual Currency Activities CSBS Model Regulatory Framework: Regulatory guidelines on the definition of crypto-assets, the scope of regulated work, accreditation, consumer protection, money laundering, etc.

## 2-1. Measures in the US (2/2)

- **2017.06. Illinois releases regulatory guidelines\*\* on transactions of crypto-assets, etc. based on existing payment settlement laws\***

\*Illinois Transmitter of Money Act: For regulatory purposes concerning the issuance, sale, remittance, and exchange of means of payment.

\*\* Digital Currency Regulatory Guidance

- **2017.07 The Uniform Law Commission adopted the Code for Regulation of Cryptographic Industry\***

\*Uniform Regulations of Virtual Currency Business Act: Adoption of each state's option (in 2018.03. Currently, Nebraska, Hawaii, and Connecticut present a bill to state legislatures to adopt the bill)

- License is mandatory only for crypto-asset dealers with a specific size of the transaction (\$35,000 per year)
  - To avoid hindering the growth of startups, exempt them from accreditation for transactions of less than \$5,000 a year, and require them to go through the registration process for dealers of more than \$5,000 a year and less than \$35,000 a year.
  - Specify 'reciprocity provision': ease the administrative burden by allowing a licensed handler in one state to obtain approval in a simple procedure in another state adopting the law.
  - Cryptocurrency asset handler complies with regulations such as cybersecurity, money laundering, and prevention of terrorist funds (AML/TFT), and may impose fines, suspend or revoke licenses in case of violation of these regulations.
- **Meanwhile, the SEC applies the same law after determining whether tokens issued by ICO fall under securities under the Securities and Exchange Act.**

## 2-2. Measures in Japan

- **Revised the Fund Settlement Act for the legal basis of the regulation of crypto-assets and protection of users (Amendment of 2015.05 and Enforcement of 2017.04)**
  - 2014. Requires legal grounds for regulating crypto-assets and protecting users as a result of massive consumer damage caused by the hacking of Mount Cox, the world's largest exchange center for Bitcoin, which had its headquarters in Japan.\
  - The Fund Settlement Act is the Virtual Currency Act, which defines virtual currencies and regulates virtual currency exchanges.
  - 2018.10. The Japanese Financial Services Agency approved the Japan Virtual Currency Exchange Association (JVCEA) as a legal self-regulatory body and submitted the revised bill on the current settlement law to the National Assembly on March 15, 2019 after the Cabinet approved it.
  - JVCEA enacted Virtual Currency Handling Rules
- **Meanwhile, the Japanese Financial Services Agency has reorganized the Fund Settlement Act and other related laws to improve confidence in finance and protect users.**
  - The project aims to enhance trust in financial functions and protect users in response to the diversification of financial transactions caused by the advancement of information and communication technology.
  - The Fund Settlement Act and other related laws are reorganized by adding financial institutions to the work of financial institutions such as the readjustment of regulations related to crypto-asset exchange operators, the readjustment of derivative transactions using crypto-assets and financial transactions, and the provision of customer-related information to third parties with his consent.

## 2-3. Measures in Germany

- **Germany's Federal Financial Supervisory Authority (BaFin) imposes regulations equivalent to financial institutions, such as accreditation, on crypto-asset handlers.**
  - Interpret crypto-assets as financial instruments that can be used as a unit of account under the Federal Bank Act.
  - However, crypto-assets are not e-money under the Payment Services Supervision Act, given that they do not have a claim to the issuer.
  - In addition, mining, payment, purchase, and delivery of encrypted assets without business purposes are excluded from the regulation of the same Act.
- **For trading platforms, such as exchanges, the decision to approve is made by considering the technical and contractual aspects of crypto-asset trading activities taking place on the platform.**
- **In March 2018, Germany and France jointly conveyed to the G20 Finance Minister the need for international cooperation regarding regulations on crypto-assets such as Bitcoin.**

## 2-4. Measures in France (1/2)

- **The French government is pushing for a policy of taking a positive stance on new innovative technologies, such as proposing to grow into a 'country of startups'\*.**
  - This is to provide investors with more information and level of protection, including the following requirements:
    - Token issuer established and registered as a corporate body in France.
    - The information documents provided shall provide all relevant information about the token, the project in question that requires funding, and the company concerned.
    - Establish a system for monitoring and security of assets raised through the acquisition inducement process
    - Obey anti-terrorism and anti-money laundering regulations.
  - So far, funding through the issuance of tokens that have not been classified as financial instruments were not subject to specific rules. When the PACTE law is established, ICO project promoters will be able to submit detailed information documents to AMF and receive optional visa on the premise that they meet specific requirements.

## 2-4. Measures in France (2/2)

- **The main contents of the new regime for crypto-assets in PACTE Bill of France are as follows:**
  - An optional visa regime for ICOs
  - Optional license for digital assets services providers (DASP).
  - Mandatory registration for two activities: (1) Registration of shareholders and executives; (2) AML/CFT
  - Funds to invest in digital assets (terms of digital assets investment funds).
  - Measures to protect investors



# France AML/CFT Regulation (1/2)

- **The classification of the relationship established with the client as business relationship or occasional relationship**
  - **The business relationship:** entering a contracts that sets out the performance of several successive transactions, creating obligations on a regular basis or by the regularity of the intervention of the client in the absence of a contract
  - **The occasional client:** performs only one or several transactions that are closely connected
- **These vigilance measures allows French financial markets authority to identify and verify the clients and beneficial owners**
  - **The identification of the client:** Individual - Name and first name, date and place of birth. Legal entity - Legal form, name, registration number and address of registered office
  - **The verification of identity:** collecting any written document with probative force
  - If the client is not physically identified,
    1. Collect a copy of a complementary document of identity and make
    2. Make a first payment in currency which is legal tender of at least one euro

# France AML/CFT Regulation (2/2)

- Regardless of the amount of the transaction, the implementation within the digital assets service provider of an **organization, procedures, internal control and appointment of a person responsible** for the compliance with obligations regarding anti-money laundering and terrorism financing considering the size and nature of its activities.
- Cryptocurrency service providers may give external providers the performance all or part of those diligences. In this case, digital asset service providers remain responsible for complying with their obligations
- The organization of the AML-CFT scheme is adapted to the size, as well as risks identified by the digital assets service provider.

## 2-5. Measures in Singapore

- Singapore's central monetary authority (Monetary Authority of Singapore, MAS), issued AML/CFT Guidelines for digital payment token service providers on March 16, 2020.
- **‘A Measure to Anti-Money Laundering and Counter-Terrorism Financing’ on December 5, 2019.**
- Companies offering the following seven (7) types of payment services can only do business by obtaining licenses from the central bank of Singapore and MAS:
  1. Account issue
  2. Domestic remittance
  3. Overseas remittance
  4. Commodity purchase
  5. E-money issuing service
  6. Digital payment token
  7. Digital payment exchange

Source: Coindesk Korea (2020)

# Singapore AML/CFT Guideline (1/2)

- **MAS issued a notice on Dec. 5 regarding the "Prevention of Money Laundering and Countering the Financing of Terrorism".** Source: Cointelegraph, (2020.03)
  - Anti-money laundering (AML)
  - Countering the financing of terrorism (CFT)
  - Proliferation financing (PF) risk
    - Risk assessment
    - Risk mitigation
    - Customer due diligence
    - Reliance on third parties
    - Correspondent accounts
    - Wire transfers
    - Record keeping
    - suspicious transaction reporting
    - internal policies.

# Singapore AML/CFT Guideline (2/2)

- While strengthening laws regarding AML/CFT/PF risks, they are designing benign frameworks that does not automatically discriminate against users and service providers.
- Most regulations issued by the MAS have been characterized by many in the crypto industry as progressive and flexible
- Singapore is already the home venture capital-backed firms like 'KuCoin'
- Singapore will soon have an office for 'OKCoin', one of the world's oldest crypto exchanges

Source: Cointelegraph, (2020.03)

## 2-6. Measures in China

- **China imposed a regulation\* in December 2013 that imposes a duty to register crypto-asset exchanges in front of government authorities in the wake of consumer damage caused by fraud at the Cryptocurrency Exchange (GBL).**
  - The People's Bank of China and Five Associated Lists Notice: Prevention of Risk Association with Bitcoin (administrative guidance under laws such as telegraph ordinances, Internet Information Service Management Policies, Banking Act, Money Laundering Prevention Act, etc.)
  - Identity customer verification (KYC), anti money laundering (AML), an obligation to report to the authorities in advance of illegal and suspicious transactions are also imposed on institutions that provide virtual accounts related to crypto-assets.
- **However, China later imposed a ban\* on the closure of crypto-asset exchanges and ICOs in September 2017 as the market for crypto-assets overheated and problems such as illegal transactions and consumer damage spread.**
  - \* Public Notice of the PBC, CAC, MIIT, SAIC, CBRC, CSRC and CIRC on Pending Risk of Fundraising through Initial Coin Offering
- **In addition, in January 2018, P2P trading of crypto-assets is prohibited\* and mining of crypto-assets is prohibited\*\***
  - \*Prohibits P2P transactions of crypto-assets through P2P brokerage sites and WeChat Pay and Alipay.
  - \*\* Power supply to crypto-asset mining companies, etc.

Source: Bank of Korea, “Cryptocurrency and Central Bank”, 2018.7

### 3. Basel Committee on Banking Supervision (BCBS) on Crypto-Assets

- BCBS issued a BCBS statement on banks' crypto-asset-related activities as the need for BCBS-level response has emerged in recent years due to the rapid growth of the crypto-asset market and increased price volatility. (September 2018) (Statement on crypto-assets: [https://www.bis.org/publ/bcbs\\_nl21.htm](https://www.bis.org/publ/bcbs_nl21.htm))
  - Presenting the expected level of soundness perspective on the bank's exposure to crypto-assets and providing related services.
  - Cryptocurrency assets are considered to be immaturity asset classes due to high variability, insufficient standards, and evolution.
  - Expect the following minimum actions to be implemented for the Bank's possession of crypto-asset exposures and related services.
    - Sufficient pre-preparation (due diligence)
    - Governance and risk management
    - Disclosure
    - Supervision report (supervision dialog)
  - Conducting monitoring: Continuing to monitor the situation in the crypto-asset market, such as direct and indirect crypto-asset exposures of banks.
  - We will express our views on robustness measures that can properly reflect the high risk of crypto-assets.
- In addition, we are working with other international standard-setting bodies such as FSB in carrying out crypto-asset-related work.

## 4. Measures in Korea (1/3)

- **Rep. Kim Byung-wook's Special Financial Information Act: Close to the Government's Proposition with the Financial Services Commission (FNNews, 2019.11.03)**
  - Among the proposed special law, it best reflects international trends such as FATF and G20
- **Discussion on the Amendment to the Special Financial Information Act (IT Chosen, November 12, 2019)**
  - Stronger regulation than FATF recommendations: Uncertainty in 'shadow regulation' such as mandatory ISMS certification of 'virtual asset service providers' as defined by FATF, strengthened requirements for issuing real-name verification accounts, and refused to report, and ex officio cancellation.
  - Much broader than the FATF recommendations: The concept of 'virtual assets' defined by the FATF prevents double regulation by not including legal currency, securities, and financial assets regulated by other recommendations.
  - However, the revision will also include companies that issue and operate financial products such as stable coins and securities linked to the legal currency in token under the Capital Markets Act or the Electronic Securities Act, which are the host statutes.
  - FATF Definition and Type Difference: FATF uses the term Virtual Asset Service Industry (VASP)
  - The special law omits the phrase 'for or on behalf of another natural or individual person' from the concept of a virtual asset handling business, allowing companies that sell or exchange virtual assets for their own business, or exchange virtual assets with company's spare funds to become virtual asset handling businesses.



## 4. Measures in Korea (2/3)

- **It is currently necessary to prepare measures to protect users throughout the entire process, from the inflow of funds into the virtual currency market in Korea to the withdrawal after the transaction is closed.**
  - Registration requirements should be set to have the necessary funds for facilities, systems, human resources, operations, compensation, etc. required for operating in the virtual currency market.
    - It is desirable to separate the functions of the virtual currency market, which is currently operated by most handling businesses, into an exchange, transfer, and storage businesses, and to set specific business requirements, such as facilities, systems, and human resources.
  - It is necessary to actively crackdown on illegal elements, such as similar reception and multi-level recruitment, through the revision of relevant laws during the entry stage of funds into the market.
    - Information necessary for entering the market, such as transaction-related risks, should be provided during the normal fund inflow phase.
  - After the inflow of funds, functions such as storage, transfer, exchange, payment, money transfer, and withdrawal of funds are divided into industries, and each industry needs to be managed by characteristics.
    - Transaction details and asset protection measures should be taken from personal and transaction information protection, hacking, etc.
    - Matters concerning delays and suspensions of money transfers, withdrawals, etc. should be recorded in the agreement in advance or carried out transparently with the open handling business policy.
  - Compensation for user damage or dissatisfaction, Insurance procedures, etc. must be prepared.manpower

## 4. Measures in Korea (3/3)

- The six virtual currency-related bills pending in the National Assembly each reflect in part the matters mentioned above, so a comprehensive review is needed to systematize them collectively or adjust their roles to legislate them.
  - Most bills define minimum capital, separating industries by function.
  - Most user protection measures, such as protection of user funds and assets, protection of transactions, provision of information, and compensation for damages, are included.

	Rep. Park Yong-jin's proposal	Rep. Chung Tae-ok's proposal
<b>Name of Bill</b>	Revised Electronic Financial Transactions Act	Special Act on the Virtualized Currency Business
<b>Virtual Currency Operator</b>	trading, trading, brokerage, publishing, management business	Transaction business, account management business, auxiliary business
<b>Entry Regulation</b>	- equity capital of 500 million won or more	
<b>User Protection</b>	<ul style="list-style-type: none"><li>- Separate management of deposits</li><li>- Responsibility for damage compensation</li><li>- No price control.</li><li>- No visits, multi-levels, telephone sales, and sales</li><li>- Explanation obligation</li></ul>	<ul style="list-style-type: none"><li>- Keep business records.</li><li>- Real name verification and prohibition of minors</li><li>- Prohibiting unhealthy and unfair acts</li><li>- Comply with information technology standards</li><li>- Balance deposit or trust</li><li>- Liability of compensation</li></ul>

# V. Discussion

# Discussion (1/2)

- **Need to create an ecosystem of correct crypto-assets and blockchains**
  - If the ecosystem of crypto-assets and blockchains is not established, it cannot develop into an industry and may rather die out.
  - It is necessary to establish and implement laws related to virtual currency transactions that help develop the national economy (such as levying taxes) while protecting investors.
- **Urgent deregulation may make blockchain-related industries difficult, so discussions on protection and growth of related industries need to be made.**
  - Multiple-stage fraud using crypto-assets is still taking place, and virtual currency is being used as a tool for money laundering around the world.

# Discussion (2/2)

- **Industry needs to be developed based on communication between stakeholders**
  - **Communication between banks and stakeholders** is important in particular
    - The position of the bank related to the real name account should also be reflected
    - Clearing the rules of responsibility between banks and exchanges in issuing real-name accounts
      - Automatic issuance of real-name accounts when conditions are met is a high risk for banks
      - Step-by-step improvement also considered
    - It has been said that AML should be introduced strongly, but the block chain industry, like the casino industry recognized as a legitimate tourism industry, also needs AML-related efforts.
  - Communication between financial authorities and the industry is also essential
    - Regulations focused on how to help domestic companies move forward to the global market and win first place, rather than finding domestic companies.

Source: Maeil News, (2020.07)

# Financial Information Act : Further Discussion (1/2)

- **Rep. Kim Byung Wook's debate Before the enforcement decree of the Special Financial Information Act**
  - The main issue is the scope of virtual asset operators and requirements for issuing real-name accounts.
  - It is difficult to enact FIU enforcement ordinance because there is no act on business rights (base law) related to cryptography.
  - Need to communicate with the industry and establish objective requirements
  - As the form of the block chain industry has yet to be established, it is proposed to distinguish technically rather than by business standards such as exchanges and custodians.
    - Regulating in a language arranged in technical terms, such as the UK's amendment to the Money Laundering Act of 2019.
    - "It costs hundreds of millions of won to issue the Information Security Management System (ISMS), which means that small developers should not start their own businesses if all the crypto operators are included." said Kim Seo-joon, CEO of Hashid.
    - The U.S., the U.K., and Singapore also create a variety of block chain services, but do not require ISMS certification, stressing the need to clarify regulatory targets by looking at overseas cases

# Financial Information Act : Further Discussion (2/2)

- **Rep. Hong Sung-kook's proposal to represent the revision of the specific financial information law (20.07.30)**
  - Provide the basis for FIU's supervision of work related to the fulfillment of its obligation to prevent money laundering.
  - Starting in March next year, virtual currency exchanges such as Bithumb and Upbit will also fulfill their obligation to prevent money laundering, including reporting suspicious transactions and high-value cash transactions.
  - Propose the bill as a blind spot with only duty and no supervision occurs

## Background of Bill Proposal

- The virtual currency market has grown so much that its accumulated transactions have exceeded 2,000 trillion won over the past five years.
- Fears of being abused for money laundering crimes due to the nature of transactions that are highly anonymous and at risk of hacking exposure

# Financial Consumer Protection Act : Background

- **The need for a legal system to prevent and resolve financial losses ranging from hundreds of billions to trillions of won.**
  - Project financing (PF) loan defaults by savings banks in the 2010s
  - KIKO crisis caused massive foreign exchange losses due to the sale of derivatives to avoid foreign exchange losses
  - DLF crisis in which large losses have occurred in foreign-interest derivatives recently
- **The need for proper law, regulation, and financial education is highlighted as the financial industry becomes more difficult to make rational choices due to the advancement and globalization of the financial industry.**
- **Establishing a sound order and promoting the development of the national economy**

## International Background

- High level principles of financial consumer protection were discussed in G20 Finance ministers meeting (October 2011)
- The main issues were "Role of Oversight Bodies," "Equitable & Fair Treatment of Consumers," and "Responsible Business Product of Financial Services"



# Financial Consumer Protection Act : Main Contents

제도		제정 전	제정 후
금융 소비자			
신설된 권리	청약 철회권 (청약 철회 시, 소비자 지급 금액 반환)	투자자문업, 보험만 법령으로 보장	없음
	위법 계약 해지권 (계약 해지로 인한 금전부담없이 해지 가능)	없음	
사후 구제	소액 분쟁 시 금융 회사의 분쟁조정 이탈 금지	없음	허용
	분쟁조정 중 소 제기 시 법원의 소송중지		
	분쟁 및 소송 시 소비자의 금융회사에 대한 자료 요구		
	손해배상 입증책임 전환		설명의무 위반 시 고의 및 과실 존부 입증에 적용
금융회사 등 금융 서비스 공급자			
사전 규제	6大 판매 규제	일부 금융업법에서 개별적으로 적용	원칙적으로 모든 금융상품에 적용
	소비자 보호 관련 내부통제	법령상 규율 없음	관련 기준 마련 의무 및 관리책임 부과
사후 제재	금전적 제재	과태료 최대 5천만원	징벌적 과징금 도입 및 과태료 최대 1억원
	형벌	3년 이하 징역, 1억원 이하 벌금	5년 이하 징역, 2억원 이하 벌금
정부			
행정 처분	대출모집 인허가	개별 금융협회에서 행정지도에 따라 규율	법령에 따라 금융위에 등록
	판매제한 명령권	없음	소비자 재산상 현저한 피해발생 우려가 명백한 경우 금융위가 발동
인프라	금융상품 비교공시 및 소비자 보호실태평가 실시근거	행정지도	법령
	금융교육	관련 규정 없음	금융교육 재정지원 및 추진체계 설치근거 마련

# Financial Consumer Protection Act : Regulation (1/2)

- Objects referred as 'users' and 'investors' who are users of banks, insurance, financial investors, savings banks, etc. are covered by the higher concept of 'financial consumers'
- Classifying financial instruments as depositable-, investment-, guarantee-, loanable goods
- Changed the definition to 'financial goods seller, etc.'
- Direct seller
  - Sales agent and broker
  - A consultant
- The six principles governing compliance with their 'financial products' business activities against 'financial consumers'
- Conformance: Do not recommend nonconforming goods
  - Appropriateness: To determine whether a product is inappropriate for consumers
  - Duties to explain: Describe the importance of the product
  - Prohibit unfair practices: Prohibit infringement of interests by superior status
  - Prohibition of Unfair Encouragement: Prohibition of Misunderstanding
  - Prohibit false advertising

# Financial Consumer Protection Act : Regulation (2/2)

- **If sold in violation of 1 to 5 of the six principles mentioned in previous page, the financial consumer shall have the right to terminate the illegal contract within five years as prescribed by the Enforcement Decree.**
  - Dispute over "illegal contract" requirements and legal effects
- **Strengthen financial education for financial consumers**
- **Granting direct financial instrument sellers management responsibilities to agents and brokers**
- **Conversion of liability to prove attributable to breach of duty of explanation**
- **Supervisor's right to order restrict sales**
  - A bill that respects the freedom of business but gives the supervisory authority a strong command in case of an emergency.
  - If it is deemed that there is a possibility of damage, it can be ordered to 'ban on the recommendation of contract conclusion or to restrict or prohibit the conclusion of contract'.
- **Punitive Penalty VS Punitive Damage Compensation**
  - Punitive Penalty: Depreciation of up to 50% of the profits of the seller who violates the sales principle.
  - Punitive Damage Compensation: In the event of serious damage caused by malicious acts, such as intentional or gross negligence, up to three times the actual damage may be ordered to be compensated.
  - 'Punitive damage compensation' included in the legislative bill was not accepted, but only 'punitive penalty' was accepted

Q & A

# Thank you!

