

FSC TO ENSURE THOROUGH PREPARATION FOR THE ENFORCEMENT OF THE ACT ON THE PROTECTION OF VIRTUAL ASSET USERS

- A comment seeking period for subordinate rules ended on January 22.
 - Operational rules on investigation and sanctions to be announced in February.
 - FSS established inspection and investigation units.
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The Financial Services Commission announced that the Act on the Protection of Virtual Asset Users (“the Act” hereinafter) will take effect from July 19, 2024. This law was enacted on July 18, 2023 with aims to protect the users of virtual assets and maintain an order in the market.

The Act largely deals with (a) protection of assets held by users of virtual assets, (b) prohibition of unfair trading activities in the virtual asset market, and (c) supervision and sanctions authority over virtual asset service providers (VASPs) and related market activities. To provide specific details delegated by the Act, the FSC had prepared an enforcement decree and a supervisory regulation and sought public comment between December 11, 2023 and January 22, 2024.

Major details of the current legislative framework on the protection of virtual asset users are as follows. First, VASPs have the duty to safely keep deposits and virtual assets owned by users. Banks have been selected as the sole financial institutions eligible to carry out the handling and custody of user deposits. To ensure safe protection of users’ assets, VASPs need to keep more than a certain level of users’ assets in cold wallets (minimum 80 percent of virtual assets’ economic value). To be prepared for incidents of hacking or computer failure, VASPs need to have a liability insurance or set aside a reserve to be able to meet demands for compensation.

In transactions involving virtual assets, the acts of using undisclosed material information, manipulating market prices, and engaging in unfair trading activities are all prohibited and punishable by either a criminal penalty or a penalty surcharge. A criminal sentence of minimum one year of imprisonment or a fine of more than three times and up to five times the amount of unfairly gained profits can be imposed. Violators may face up to a life sentence depending on the amount of unfairly gained profits (if more than KRW5 billion). Imposing a penalty surcharge at double the amount of unfairly gained profits is also possible. A penalty surcharge can be issued after the FSC receives an investigation result from the Prosecutors’ Office, or after consulting with the Prosecutors’ Office.

The Act also grants the authority of supervision and inspection on VASPs and investigation and related measures over unfair trading activities to the FSC. The function of inspecting VASPs will be delegated to the Financial Supervisory Service. The FSC and the FSS will have an authority to investigate persons suspected of engaging in or being involved in unfair trading activities. When a violation of the Act is

found, the FSC can order business suspension, corrective action, or report case to the Prosecutors' Office.

To ensure a seamless implementation of the Act, the financial authorities plan to establish relevant infrastructures for the supervision, inspection and investigation of VASPs and thoroughly prepare VASPs for the enforcement. In this regard, on January 9, the FSS already set up two units specifically tasked to supervise and investigate VASPs and related market activities. A monthly compliance roadmap and checklists will also be provided to VASPs. Given large price swings in the market, unfair trading activities may potentially inflict severe damages to people. In this regard, even prior to the enforcement of the Act, the financial authorities have been actively collaborating with investigative authorities to ensure strict punishment on wrongdoings. From January 30, the fraud prevention call center operated by the FSS has begun to operate at an expanded capacity. In the long run, authorities will consider introducing a reward system for whistleblowers to facilitate reporting of illegitimate activities involving virtual assets.

The FSC will review comments collected on the enforcement decree and supervisory regulation to see whether they can be incorporated into the law prior to the scheduled enforcement of the Act from July 19.

In February, the FSC also plans to announce a set of operational rules on the inspection and investigation of VASPs for public comment.

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