

March 16, 2020

**Legal Update**

# Act on Reporting & Use of Specific Financial Information Amended – Key Implications

Despite the high risks for misuse of virtual asset transactions for money laundering and terrorist financing, there has been an absence of legal framework to prevent such risks in Korea due to the anonymity of virtual asset transactions.

The G20 countries have agreed on the need for international cooperation to regulate virtual asset transactions. In June 2019, the Financial Action Task Force (“FATF”), a global money laundering and terrorist financing watchdog, also recommended member countries to establish regulatory frameworks to regulate misuse of virtual asset transactions for money laundering and terrorist financing.

In response, numerous bills to amend the Act on Reporting and Use of Specific Financial Information (the “Act on Specific Financial Information”) have been introduced in Korea. On November 22, 2019, the National Policy Committee’s Subcommittee on the Deliberation of Bills examined the revised bill, which the Korean National Assembly then passed on March 6, 2020 (the “Amendment”).

The Amendment will be enforced one year after the date of promulgation.

## Key Changes

We provide below a brief overview of the key provisions of the Amended Act on Specific Financial Information.

### **Definition of virtual assets and virtual asset businesses; explicit inclusion of virtual asset transactions in financial transactions**

Previously, Korean law had not defined virtual assets, and various terms were used (e.g., cryptocurrency, virtual currency, and virtual assets).

The Amendment specifically defines “virtual assets” and “virtual asset businesses/operators.” Further, the Amendment explicitly provides for its application to virtual asset transactions.

#### Specifically:

- Since the Amendment widely defines virtual assets as “an electronic certificate with economic value (including any and all relevant rights) that may be traded or transferred electronically,” coins and tokens (such as bitcoin) fall under “virtual assets.” However, the following do not fall under the definition of virtual assets (“**Exceptions**”): (i) electronic prepayment means and electronic currencies, as defined under the Electronic Financial Transactions Act; (ii) results under the Game Industry Promotion Act; and (iii) any other assets as prescribed under the Presidential Decree of the Amendment (the “**Presidential Decree**”), considering the form and characteristics of the transactions involving such assets (Article 2 3).
- Also, the Amendment provides for a **comprehensive definition of “virtual asset businesses/operators,”** which is defined as persons or entities engaged in any one of the following: (i) sale and purchase of virtual assets; (ii) exchange between virtual assets; (iii) transfer, safekeeping, and management of virtual assets as defined under the Presidential Decree; (iv) agency/brokerage/intermediary services or for the above-mentioned transactions; or (v) any other transaction defined as being highly likely to be used in money-laundering and terrorism financing under the Presidential Decree

(Article 2(1)(n)). Accordingly, the Amendment will likely apply to most service providers or operators engaged in transactions relating to virtual assets.

- Further, the Amendment specifically provides that “financial and other transactions” regulated under the Act on Specific Financial Information include the business activities of virtual asset businesses (Article 2(2)(d)).

---

## Financial companies and other entities’ obligation to verify virtual asset businesses and reject or terminate transactions with virtual asset businesses

Under the Act on Specific Financial Information, financial companies and certain other entities are required to verify certain customers, and if verification is not feasible, to reject or terminate transactions with customers.

For virtual asset business customers, the Amendment requires financial companies and certain other entities to not only verify the customers, but also the details of the virtual assets. In addition, the Amendment has expanded the grounds for financial companies and certain other entities to refuse or to terminate transactions with virtual asset business customers.

### Specifically:

- For virtual asset business customers, the following must be additionally verified: (i) filing of the report under Article 7, acceptance of such a filing, and cancellation of such a report; (ii) separate management of the deposited property of its customers and the property of the virtual asset businesses; and (iii) certification of information security management system (“ISMS”) under the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (Article 5-2(1)3).
- For virtual asset business customers, transactions may be rejected or terminated under the following additional grounds: (i) non-performance, non-acceptance or cancellation of the report under Article 7; and (ii) any other grounds provided under the Presidential Decree (Article 5-2(4)2).

---

## Offshore application of the Act on Specified Financial Transaction Information

The Amendment applies to any financial transaction of virtual asset businesses that occurs overseas and has an effect in Korea (Article 6(2)).

---

## Virtual asset business reporting and non-acceptance

Under the Amendment, virtual asset businesses are required to report the following to the Commissioner of the Korea Financial Intelligence Unit (“KFIU”): (i) trade name; (ii) representative’s name; (iii) place of business; (iv) contact information; (v) any other information required under the Presidential Decree; and (vi) any modification to the foregoing information.

In addition, the Commissioner of the KFIU may refuse to accept a report in the event any of the following occurs:

- If the virtual asset business has not obtained ISMS verification;
- Unless exceptions defined by the Commissioner of the KFIU apply, if the virtual asset business has not engaged in any financial transactions through deposit accounts (accounts that allow financial transactions only between the virtual asset business’ account with designated financial companies under the Presidential Decree and the virtual asset business customers’ accounts) for which the real name may be verified;
- If five years have not passed since the execution of or excuse from fines or heavier punishment under finance laws as provided under the Amendment and the Presidential Decree (if the virtual asset business is an entity, including the punishment of representatives or officers); or
- If five years have not passed since the Commissioner of the KFIU cancelled the virtual asset business’s report.

---

## Cancellation of report and business suspension

Under the Amendment, the Commissioner of the KFIU has the authority to: (i) cancel the report filed by the virtual asset business; and (ii) to suspend for up to six months, a part or the whole business of a virtual asset business (Article 7(4)).

The specific grounds for cancellation or business suspension are as follows:

### Grounds for cancellation:

- If any cause for rejection of acceptance of the virtual asset business report has occurred under the Amendment;
- If the virtual asset business continues operations even after reporting closure of the business under Article 8 of the Value-added Tax Act or the head of the tax office having jurisdiction over the virtual asset business cancels the virtual asset business' business registration;
- If the virtual asset business fails to comply with the Commissioner of the KFIU's order to suspend business; or
- If the report was filed falsely or otherwise unlawfully.

### Grounds for business suspension:

- If the virtual asset business fails to comply with corrective orders of the Commissioner of the KFIU under the Amendment;
- If the virtual asset business is subject to three or more warnings of the Commissioner of the KFIU under the Amendment; or
- If due to its intentional or grossly negligent act or omission, the virtual asset business fails to implement measures to prevent money laundering and terrorism financing, as prescribed under the Presidential Decree.

**Implication:** The virtual asset business report under the Amendment will be effective from the date of the acceptance for a period prescribed under the Presidential Decree not exceeding five years. To continue business after the report expires, then the virtual asset businesses must re-file a report as prescribed under the Presidential Decree.

---

## Newly added criminal punishment for virtual asset businesses

Under the Amendment, any virtual asset organization that engages in business without filing a report as required under the Amendment may be subject to imprisonment of up to five years or fines of up to KRW 5 million (Article 17(1)).

Also, failure to file a modification report may result in imprisonment of up to three years or fines of up to KRW 3 million (Article 17(2)).

---

## Other Relevant Requirements

- Any virtual asset businesses existing prior to the enforcement of the Amendment must fulfill the requirements under Article 7, and must file a report within six months from the date of the enforcement.
- Financial companies and certain other entities will be required to conduct verification of virtual asset businesses existing prior to the enforcement of the Amendment upon the first financial transaction after the date of the enforcement.
- Virtual asset businesses will be required to conduct verification of customers with whom it engages in virtual asset transactions upon the first virtual asset transaction after the date of the enforcement.

---

## Overall Significance & Need for Further Monitoring

The Amendment is the first to introduce a legal definition of virtual assets and virtual asset businesses in Korea. Moreover, it has extended the role of the KFIU, and requires virtual asset businesses to obtain ISMS certification and to use real-name accounts.

Accordingly, with concerns that the new requirements will burden many small-sized virtual asset businesses, there is also expectation that high-quality organizations may now conduct business on legitimate grounds, and that the Korean virtual asset industry may now develop under a legal framework.

Since the material provisions of the Amendment will be determined under the Presidential Decree, which will be amended by the enforcement date of the Amendment, the details contained in the Presidential Decree will be important to carefully review and analyze.

### About Shin & Kim's Digital Tech & Data Law Practice Group:

We provide highly professional and integrated services to businesses engaged in digital technology and data, including blockchain, fintech, AI, and data monopolies. Please contact any one of us with your questions or comments.

---

Should you have any questions or comments about the contents of this newsletter, please do not hesitate to contact us.

## Contacts



**Junghee Cho**  
Partner

+82-2-316-1624  
jhcho@shinkim.com



**Jae Cheong Oh**  
Associate

+82-2-316-1782  
jcoh@shinkim.com



**Haesung Jeong**  
Associate

+82-2-316-4469  
hsujeong@shinkim.com

---

**SHIN & KIM**  
법무법인(유) 세종

The content and opinions expressed within Shin & Kim LLC's newsletter are provided for general informational purposes only and should not be considered as rendering of legal advice for any specific matter.

Seoul · Pangyo · Beijing · Shanghai · Ho Chi Minh City · Hanoi · Jakarta

---