

THE ACT ON THE PROTECTION OF VIRTUAL ASSET USERS TO TAKE EFFECT FROM JULY 19

- Key provisions include (a) ensuring safe protection of users' deposits and virtual assets, (b) establishing statutory foundations to investigate and punish unfair trading activities in the virtual asset market, and (c) bringing virtual asset service providers (VASPs) under the supervision and regulatory oversight of the financial authorities.
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The Financial Services Commission announced that the Act on the Protection of Virtual Asset Users, which intends to establish a sound order in the virtual asset market and ensure protection for users, will take effect from July 19.

BACKGROUND

In March 2021, the Act on Reporting and Using Specified Financial Transaction Information was revised to introduce a requirement under which virtual asset service providers (VASPs) were mandated to register with the financial authority. In addition, various types of regulatory mechanisms, such as travel rule, that are aimed at preventing money laundering were established. However, it was continuously pointed out that the regulatory framework centered on anti-money laundering was not adequate for authorities to actively respond to various types of unfair trading activities, such as price manipulation, and for guaranteeing safe protection of users' assets.

Considering the importance and urgency of providing safe protection for users, the Virtual Asset User Protection Act was enacted on July 18, 2023, reflecting key provisions proposed under 19 legislative bills that were pending at the National Assembly. For about one year since then, subordinate regulations have been drawn up, and VASPs were given the time needed to prepare for the implementation of the Virtual Asset User Protection Act from July 19, 2024.

KEY PROVISIONS OF THE VIRTUAL ASSET USER PROTECTION ACT

This Act contains provisions (a) protecting users' deposits and virtual assets, (b) regulating unfair trading activities, such as price manipulation, (c) authorizing the financial regulators to supervise, inspect, and sanction VASPs, and to investigate and take appropriate actions against those engaging in unfair trading activities.

First, customers' deposits should be safely kept at banks, and VASPs need to pay fees to their customers as interest payments on their deposits. VASPs should keep users' virtual assets separate from their own virtual assets, and need to actually have

in their custody the types and volume of virtual assets their customers have. VASPs need to be insured against liabilities resulting from hacking or other types of network malfunctioning accidents or set aside a reserve fund to cover accidents.

With regard to the regulatory framework on unfair trading activities, VASPs should maintain a surveillance system for suspicious transactions at all times and immediately report suspicious trading activities to the Financial Supervisory Service (FSS). After going through investigations by the financial and investigative authorities, those who are found to have engaged in unfair trading activities may be subject to criminal punishment or penalty surcharge.¹

With the implementation of this law, the financial authorities will have the authority to supervise, inspect, and sanction VASPs. The FSS is authorized to inspect VASPs for compliance with their duties to protect users, and the FSC is authorized to bring sanctions against rule-breakers by making corrective orders, issuing suspension of business operation, imposing administrative fines, and so on.

PREPARATION FOR IMPLEMENTATION

The financial authorities have been preparing to ensure a seamless implementation of the new law. The FSC prepared subordinate statutes specifying detailed provisions delegated by the law. In February this year, the FSS provided VASPs with a roadmap for preparing for the implementation of the law and offered on-site consultations. Since June, a pilot test for implementing the law was put in place to check the readiness of both the regulators and VASPs. The mandatory insurance product guaranteeing protection against hacking or network malfunctioning has been launched in time for the implementation of the law. The Digital Asset Exchange Alliance (DAXA) along with 20 virtual asset exchange service providers prepared their own best practice guidelines as part of the industry-wide self-regulatory mechanisms. The guidelines suggest the minimum level of compliance standards required for all virtual asset exchange service providers and recommend that VASPs provide essential information, including Korean language version of virtual asset whitepapers and other key information, to their users.

EXPECTATION

The FSC expects that the implementation of the Virtual Asset User Protection Act will establish a foundation to provide safe protection for users. As it becomes possible to bring severe penalties against those engaging in unfair trading activities, it is also expected to help establish a sound order in the virtual asset market. The financial authorities plan to continue to seek stronger cooperation with investigative authorities and actively seek improvements to make sure that the new law is effectively implemented.

¹ (Criminal punishment) Minimum 1 year of imprisonment or a fine of 3 to 5 times the amount of unfair profit.
(Penalty surcharge) Twice the amount of unfair profit, but maximum KRW4 billion.

A NOTE FOR USERS

Virtual asset users should be aware that the Virtual Asset User Protection Act does not guarantee the safety of their virtual assets. While considering the high level of risk and volatility generally associated with virtual assets, users are recommended to carefully make investment decisions at their own risk. In addition, users should be aware of the risk of trading through an unregistered service provider or engaging in over-the-counter (OTC) and peer-to-peer (P2P) transactions, since there are no proper market surveillance mechanisms for them.

Moreover, users should note that the types of unfair trading activities that have been uncovered in the capital market are similarly taking place in the virtual asset market. When finding suspicious trading activities, users are advised to immediately report to the FSS. When suspected to be involved in a fraudulent scheme, they should immediately report to the investigative authorities.

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