

Ministry of Justice to Lead Korea's Virtual Currency Task Force and the Potential ICO Ban

On December 4, 2017, the Korean government's Virtual Currency Task Force ("**Task Force**") held its fourth meeting since being formed in November 2016. Shortly thereafter, the Task Force issued a press release summarizing the meeting and announced that the Ministry of Justice will take over the lead of the Task Force (replacing the Financial Services Commission, which had led since its inception). SEUM believes this signifies a major change in the government's approach to cryptocurrency regulation and could ultimately have a greater impact on the regulatory environment than the misinterpreted (and misreported) "Korean ICO ban" announced in September 2017.

"This is NOT an ICO Ban Yet"

To clarify a misconception in the market, ICOs are not currently banned in Korea. The source of this misconception stems from the following: First, the September 29, 2017 press release issued by the Task Force ("**ICO Press Release**") included a short (and slightly unclear) sentence stating that the Task Force's policy is to ban all types of ICOs, regardless of the type of coin. Second, this sentence was quickly picked up and interpreted (incorrectly) by the media as a ban on all ICOs and reported by several news outlets, including CNBC and Reuters, which published headlines such as "South Korea bans all new cryptocurrency sales" and "South Korea bans raising money through initial coin offerings." However, the Task Force's announcement, as a legal matter, is not itself an ICO ban, and a closer look at the ICO Press Release demonstrates that even the Task Force is aware that new legislation must be passed to impose such a ban.

No Legal Basis for ICO Ban

For the Task Force to "legally" ban ICOs, it needs a legal basis for such actions under existing laws as it only has the power to enforce existing laws or propose new legislation to the National Assembly. In other words, the Task Force cannot enact new legislation. Accordingly, in the ICO Press Release, the Task Force announced that it will regulate ICOs of securities-type tokens under existing securities laws, and for ICOs of other types of tokens, the Task Force did not mention the laws under which it would prohibit such activity. Moreover, although the Task Force did not state explicitly that it does not have a legal basis for prohibiting ICOs, it acknowledged this fact indirectly by stating that it may propose an amendment to existing laws to prohibit ICOs. Given the Task Force's generally negative view of cryptocurrency (e.g., it refers to itself as a "virtual currency" Task Force to create the impression that cryptocurrency has no real value), it may have intentionally crafted vague language in the ICO Press Release to give the impression of an ICO ban. If so, creation of a mythical ICO ban seems to have been achieved as many believe, especially outside of Korea, that ICOs are indeed banned in Korea.

No Additional Clarity on ICOs

The December 4 press release issued by the Task Force did not clarify its prior language regarding ICOs nor did it include any strong language regarding banning of crypto-related activities. However, unlike previous press releases that focused on the need for consumer protection measures, this latest press release concentrated on cryptocurrency trading and aggressively tried to discourage the public from investing in cryptocurrency. For example, the press release provided a list of news headlines that have called bitcoin a fraud and a bubble, and outlined 7 reasons why cryptocurrency will not become legitimate currency. This negative tone appears to be a response to the recent dramatic increase in the price of bitcoin and other cryptocurrencies, particularly in the months of November and December, and we do not believe it implies any particular substantive position from a regulatory perspective.

Impact of Ministry of Justice Leading Task Force

The appointment of the Ministry of Justice as the leading agency for the Task Force may have significant regulatory policy implications for several reasons. The appointment comes on the heels of a speech by Korea's Prime Minister before the cabinet in which he expressed concern over cryptocurrency and its potential influence on crime. Since the Task Force was formed over a year ago, it has not presented a detailed proposal for policy changes and the appointment of the Ministry of Justice appears to be the new administration's means to accelerate the legislative process (e.g., the Ministry of Justice has multiple departments that focus on policy planning and development). The Ministry of Justice also oversees the prosecutors' office and therefore prosecutors may increase their focus on cryptocurrency-related crimes going forward. Finally, the Task Force may have shifted its view away from potentially regulating (and legitimizing) cryptocurrencies under financial services and securities laws.

Accordingly, compared to the ICO Press Release, the impact of the changes mentioned in this December 4 press release are more likely to have a lasting effect, and we may see legislation (for the first time) in Korea that specifically regulates cryptocurrencies in 2018. In fact, after the December 4 meeting, the Korean media reported that the government may have already prepared concrete proposals for a legislative amendment which would effectively ban ICOs and require cryptocurrency exchanges to implement new consumer protection measures. We will provide additional updates as further developments arise.

For additional information regarding this alert or to sign up for future updates, please contact Steve Ahn or Steve Kim. For information generally on cryptocurrency, ICOs, regulatory matters or other related questions, please do not hesitate to contact the partners in SEUM's blockchain and cryptocurrency team, Steve Ahn and Hoseok Jung.

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