South Korea: Blockchain

This country-specific Q&A provides an overview to blockchain laws and regulations that may occur in South Korea.

For a full list of jurisdictional Q&As visit here
1. **Please provide a high-level overview of the blockchain market in your jurisdiction.** In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction, and what is the state of development of the market?

While some regulations have been introduced to restrict investment in cryptocurrency, the government has recognized the innovative nature of blockchain technology and its importance in Korea’s economic policy goals for the 4th Industrial Revolution. National institutions and local governments have launched blockchain pilot projects including, among others, the Korea Customs Service’s pilot personal customs clearance service for e-commerce products, the National Election Commission’s blockchain-based online voting system, and the Ministry of Foreign Affairs’ blockchain-based overseas diplomatic establishments’ notarization issuance system establishment project. At the same time, the Seoul Metropolitan Government announced a plan to invest around USD 108 million between 2019 and 2023 to promote early stages businesses using blockchain, construct a blockchain complex for several hundred businesses, and introduce educational programs on blockchain.

In the private sector, major blockchain-based companies have launched mobile payment services. Kakao, Korea’s largest online messaging application, introduced a blockchain platform through its blockchain unit, Klaytn, whose mainnet launched in June 2019. Klaytn has partnered with 56 service partners, many of which have already launched blockchain services. Klaytn has recently listed its token, KLAY, with exchanges in Indonesia and Singapore. Another blockchain payment platform, Terra has announced in September 2019 that its mobile payment distributed application CHAI will partner with BC Card, the largest payment processor in Korea, to launch a debit card. Major online merchants including TMON, one of Korea’s largest e-commerce sites, now accept CHAI as a payment means. In the past four months, CHAI reached 500,000 users, processing $54 million worth of transactions. In December 2019, CU, a Korean convenience store chain, will begin accepting CHAI payment as well in all its 14,000 locations.

Korea’s largest conglomerates have also contributed to blockchain momentum through various private investments. SK Telecom, Korea’s largest wireless carrier, announced its plans to focus on the blockchain business. Specifically, SK Telecom plans to manage subscriptions, payments, and real-name authentication via blockchain. In February 2019, SK Telecom announced its partnership with Deutsche Telekom to develop a blockchain platform for digital identification. The platform would be used for logins, dealings, and contracts and could potentially replace the hard copies of government-issued IDs. Line Corporation, the Tokyo-based subsidiary of Korean internet giant Naver Corporation, created its own cryptocurrency LINK. Line Corporation plans to launch its own wallet [LINK ME] which can be used to manage LINK. Users can use LINK to purchase contents (e.g., music, videos, webtoons), make in-app payments (e.g., games), and make in-app wire transfers to other individuals.
2. Have there been any notable success stories or failures of applications of these technologies in your jurisdiction?

KT Corporation, Korea’s largest telecom company, launched the first blockchain-based 5G network in April 2019, allowing companies to conduct transactions without an intermediary. KT’s GiGA Stealth technology, a blockchain-based IoT security solution, essentially hides the IP addresses of the connected devices from hackers while KT’s GiGA Chain network enables various blockchain-based features such as smart contracts. KT’s blockchain-based network is currently running a city-wide payment platform in Gimpo city and will be expanded to other cities including Ulsan.

In the energy sector, Korea Electric Power Corporation (“KEPCO”), Korea’s sole provider of retail power, has signed a contract with two domestic power generators to establish a blockchain-powered system for Renewable Energy Certificate (“REC”) transactions. The collaborative agreement, currently in the pilot stage, aims to improve the transparency and efficiency of REC trading in Korea. Upon completion of the pilot program, KEPCO and the generators will follow up with a commercial project.

Mainstream financial institutions have already launched major projects to implement blockchain technology and proprietary cryptocurrency. Shinhan Bank is adopting blockchain technology for its loan application process. By verifying items of proof, such as certification documents and various qualifications, through a blockchain-powered platform, Shinhan Bank is expected to cut down on the time spent on the verification process and operating costs. Shinhan Bank has already successfully adopted blockchain technology to verify its customers’ membership status with a Korean doctors’ association. With blockchain technology, Shinhan Bank reduced the membership verification time from two to three days to almost immediately.

Another major Korean bank, KEB Hana Bank, plans to use blockchain technology via its Global Loyalty Network platform in Taiwan to enable transactions with digital cash across multiple countries through partnerships with third-party companies. KEB Hana Bank has upcoming plans to expand its presence outside of Korea through partnerships with non-banking companies. The integration of blockchain platforms is likely to increase in the future as the bank expands its blockchain-based services both regionally and globally.

3. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

There is no existing blockchain-specific legislation or regulatory framework in Korea. The Korean regulatory authorities have not provided clear insight on the classification of cryptocurrencies under Korean law. However, the Financial Supervisory Service (the “FSS”) issued a press release on June 23, 2017 clarifying that from a Korean financial regulatory
perspective cryptocurrencies are not considered (i) fiat currencies, (ii) prepaid electronic means or electronic currencies or (iii) financial investment instruments. Unfortunately, the FSS press release does not provide any guidance on how cryptocurrencies are classified and in what legal form.

On the other hand, by ruling on May 30, 2018 that cryptocurrencies can be confiscated as criminal proceeds, the Supreme Court of Korea recognized cryptocurrency as legal property. The FSS announcement and the Supreme Court ruling are both too narrow in scope to clarify how cryptocurrencies will be classified in any subsequent cryptocurrency laws or regulations in Korea.

4. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

The Korean government views blockchain technology as part of its key economic policy goals for the 4th Industrial Revolution and has announced its plans to expand blockchain's application in the public sector, invest in research and development of blockchain technology, and attract more blockchain professionals. In 2019, the Korean government is projected to nearly double its spending on blockchain development in certain Korean cities from 2018.

The Financial Services Commission (FSC) has announced its plans to create a new department exclusively for policymaking initiatives in the nation's blockchain industry called the Financial Innovation Bureau. The new department will be tasked with policy initiatives for financial innovation, such as innovating financial services using fintech or big data, and responses to new developments and challenges such as cryptocurrencies.

The Korean government has also clarified that blockchain technology generally should be distinguished from cryptocurrency, which will be strictly regulated to restrict risky investments.

5. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox)?

In November 2018, the Special Act on Financial Innovation Support (the Special Act) introduced Korea's regulatory sandbox policy for the financial sector. Under the Special Act, companies selected by the FSC are exempted from current financial regulations for two years to test new technologies outside the complex regulatory environment.

As of May 2019, of the 18 fintech solutions selected for the regulatory sandbox, three incorporate blockchain technology: Directional, KOSCOM and Kasa Korea. Directional will test a blockchain-based stock lending platform that provides stock lending and borrowing services for individual investors. KOSCOM will test a blockchain-based financial service that computerises and updates the list of shareholders of non-listed small and medium-sized
enterprises to support the peer-to-peer and over-the-counter trading of such stocks. Kasa Korea will test a blockchain-based financial services platform that issues and distributes mortgage-backed securities in a form of electronic securities. As for blockchain-based services using cryptocurrency, Korean regulators have not yet announced their positions and no projects involving cryptocurrency have been approved for the FSC’s regulatory sandbox. MOIN, a fintech startup using cryptocurrency to provide global monetary transfer solutions, applied for sandbox participation in February this year, but the Ministry of Science and ICT (MSIT) eliminated MOIN from the list of sandbox candidate companies to be evaluated by the relevant FSC panel. The MSIT commented that further consultations must be conducted with the relevant authorities.

6. **Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?**

Major government institutions including the FSC, the Ministry of Justice, MSIT and the Office for Government Policy Coordination convened a Special Committee Meeting for the 4th Industrial Revolution in June 2019 to discuss blockchain technology.

The key agreements from the meeting were:

- The government will promote flexibility in adopting appropriate policies for blockchain technology, but will clearly distinguish blockchain from cryptocurrency;
- The government will invest in blockchain technology and expand its application in the public sector;
- Initial coin offerings (ICOs) still lack an international regulatory framework and pose substantial risks to investors; and
- The government will take additional steps, including amending existing anti-money laundering regulations, to protect the retail investors.

7. **Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?**

There has been no official guidance from the Korean regulatory authorities on the general use of blockchain technology. The official guidelines from the authorities are limited in scope to cryptocurrency and anti-money laundering.

8. **What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?**

There are no laws of regulations that specifically regulate transactions involving cryptocurrencies in Korea. However, Korean regulators tend to apply existing relevant Korean laws such as the Financial Investment Services and Capital Markets Act (FSCMA) and the Criminal Act to cryptocurrency-related transactions. The FSCMA defines securities
as "financial investment products for which investors do not owe any obligation to pay anything in addition to the money or any other valuables paid at the time of acquiring such instruments." Securities are categorized into six classes under the FSCMA: (1) debt securities, (2) equity securities, (3) beneficiary certificates, (4) investment contract, (5) derivatives-linked securities, and (6) depositary receipts. Cryptocurrency could likely fall under the FSCMA’s definition of debt security, equity security or investment contract depending on the specific facts and circumstances involved.

Cryptocurrency exchanges are not directly subject to any anti-money laundering requirements under the Act on Reporting and Use of Certain Financial Transaction Information (the "[AML Act][1]"). However, virtual currency exchanges are indirectly affected by the AML Act’s anti-money laundering requirements through its application to financial institutions.

There are also several bills seeking to directly regulate cryptocurrency exchanges proposed in the National Assembly including the Special Act on Cryptocurrency Business, which seeks to, among others, impose licensing requirements, anti-money laundering requirements, consumer protection and cybersecurity requirements for cryptocurrency exchanges and cryptocurrency-related businesses, impose record-keeping obligations, explicitly incorporate cryptocurrency businesses into the AML Act, and mandate the adoption of cybersecurity measures.

Financial institutions doing business with virtual currency exchanges and/or custodial wallet providers are subject to the Financial Intelligence Unit’s Anti-Money Laundering Guidelines for Cryptocurrency published in January 30, 2018 (the "[AML Guidelines][2]"). The notable requirements under the AML Guidelines include the following: (i) real-name verification for fiat withdrawal from and deposits to cryptocurrency exchanges, (ii) customer due diligence to check the identity of users, maintenance of a separate transaction record for each user, and compliance with cryptocurrency-related policies, and (iii) monitoring and reporting suspicious transactions. The financial regulators may issue correction orders or business suspension orders pursuant to the AML Act if a financial institution violates a provision of the AML Guidelines.

There are no Korean tax laws that explicitly regulate cryptocurrencies. Some accounting firms have interpreted cryptocurrencies as "intangible assets" for Korean accounting treatment. The National Tax Service ([NTS][3]) has called for the need to develop accounting standards for cryptocurrencies. The Ministry of Economy and Finance has announced that plans for the taxation of cryptocurrencies are being developed, but no decisions have been made. The NTS published its preliminary assessment of taxing cryptocurrencies, which is not an official policy but does represent the only published position or research on cryptocurrency taxation by the government. The NTS' assessment noted that cryptocurrencies are hybrid products that have characteristics of, among others, fiat currency, securities and goods. Based on this determination, the NTS has made a preliminary assessment of taxation on cryptocurrencies under the existing laws as
summarized in the table below:

In addition, the NTS has noted that to increase transaction transparency and to prevent tax avoidance, strengthening the regulation of cryptocurrencies is required. The NTS mentioned the introduction of a registration requirement for cryptocurrency exchanges, the implementation of the Real Name Verification System, and the imposition of anti-money laundering requirements and reporting requirements on cryptocurrency exchanges as examples of possibly regulatory improvements.

9. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

In January 2018, the FSC banned foreigners and minors from cryptocurrency trading to prevent loss by participating in virtual currency investments that have massive fluctuations. Moreover, cryptocurrency trading through anonymous virtual bank accounts has been banned as the name on the trader’s bank deposit account must match the account name at cryptocurrency exchanges.

10. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

On September 29, 2017, the FSC issued a press release banning any type of ICOs in Korea, including those taking the form of securities. The FSCMA acts to directly prohibit an ICO if the offered coins are classified as ‘securities’ under the FSCMA. Under the FSCMA, an offer or sale of securities (tokens) to 50 or more non-accredited investors would be regarded as a public offering and be subject to the FCMA’s offering restrictions. If a token is classified as a ‘security’, the issuer must file a securities registration statement for the tokens to be offered in Korea with the FSC. If the offered coins are not classified as ‘securities’ under the FSCMA there are technically no specific legal grounds that would prohibit the ICO, but there is a strong possibility (as evidenced by the September 29, 2017 FSC press release) that Korean regulators would challenge the legality of the ICO.

11. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

N/A

12. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

There are a number of leading cryptocurrency exchanges operating in Korea that allow consumers to exchange cryptocurrency with fiat currency or other cryptocurrencies. Korea is
one of the global leaders of cryptocurrency trading in terms of volume and has one of the highest penetration of cryptocurrency ownership by its residents. At one point in 2017, Korea experienced a dramatic increase in the volume of cryptocurrency trading for a 24-hour period during which Korean cryptocurrency exchanges averaged up to around USD 6.9 billion in trading volume. In response, the Korean government formed an intergovernmental task force to create and implement cryptocurrency regulations. Cryptocurrency trading continues to expand, as evidenced by the fact that the total amount of cryptocurrency funds linked to Korean bank accounts has increased by more than 14 times over the past three years.

13. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

Korea’s leading blockchain research centers, Chain Partners’ CP Research and Coinone Research Center, have identified security tokens as the next important phase in the blockchain industry. Security tokens are strictly regulated by the government which distinguishes crypto-based investments from blockchain technologies. However, the Liberty Korea Party (Korea’s main opposition party) plans to unveil its final 2020 Economic Transformation plan which seeks to authorize blockchain-based securities token issuance and asset tokenization. This plan offers a much more cryptocurrency-friendly stance than that espoused by the current administration and attempts to mitigate current regulatory uncertainty.

14. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

There are multiple issues concerning the transfer of title or granting of security as the law does not define at which point the transfer is made. In general, control over the tokens/virtual assets (i.e., holding private keys to the tokens/virtual assets) is considered as having ownership over the tokens/virtual assets. However, there are instances where tokens/virtual assets are controlled by multiple parties. In such cases, it is uncertain how the law will define ownership in relation to the transfer of title. This area of security tokens of title and assets, however, has been a growing industry in Korea as new token products are being developed.

15. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any key initiatives concerning the use of tokens and virtual assets in your jurisdiction.

Tokens and virtual assets are primarily used for payment, utility, and investment in Korea. As explained above, major financial institutions have already launched projects to adopt tokens/virtual assets for their payment systems.

16. How are smart contracts characterised within your legal framework? Are there any
enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

Korean law generally does not require a particular form/structure in contract formation so long as there is an offer and acceptance between the parties. In other words, Korean contract does not have to be recorded in writing to be enforceable. Enforceability issues with smart contracts may arise, however, depending on how information is encoded in smart contracts. By this nature, smart contracts are comprised of programmed codes that usually cannot be easily understood by a lay person. As a result, the issue of whether there was a valid offer and acceptance between the parties is likely to arise. Moreover, there is no case precedent where a record of smart contract in a blockchain network has been admitted as evidence in Korean legal proceedings.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction.

The MSIT launched the Blockchain Regulation Improvement Study Group in May 2019 as part of its initiative to promote blockchain technology. This study group is tasked with reviewing key blockchain issues (including smart contracts) in relation to logistics and distribution, public services, healthcare, finance, and energy.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

The government actively investigates cryptocurrency-related fraud and criminal acts. Criminal penalties have been imposed on multilevel fraud schemes, investment fraud related to cryptocurrency mining, and concealment of criminal proceeds through money laundering under the Criminal Act, which governs criminal fraud, and the Civil Act, which governs civil fraud. For instance, in May 2018, the head of AirBeat Club, a multilevel scheme that claimed to guarantee profits by selling Bitcoins in countries with higher prices, was convicted of fraud and sentenced to seven years in prison. The court stated that the company took advantage of investor sentiment and lack of investor expertise to defraud them even though there was no guarantee of recovering the invested amounts. In August 2019, the head of AllstarBit, a cryptocurrency exchange with more than 26,000 investors, was convicted of fraud and manipulation of cryptocurrency prices/transaction records. AllstarBit's own cryptocurrency, in addition to Bitcoin and Ethereum, was also listed on the exchange and the company was found to have defrauded customers through gift giveaway schemes.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

There has been no judicial consideration of blockchain or smart contracts, but the Korea Information Society Development Institute released a report entitled Research on the Application of Smart Contracts to the Public Sector with a focus on blockchain technology and smart contracting. The Smart Contract Research
compares smart contracts to traditional contracts under the Korean Civil Code and calls for the need to update the regulatory framework to accommodate smart contracts.

20. **Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?**

Due to blockchain technology’s decentralized handling of data, it is unclear how Korea’s existing data and privacy laws will address specific uses of blockchain technology in Korea with personal information.

Under Korea’s Personal Information Protection Act (PIPA), personal information is defined as information pertaining to a living individual (e.g., name, address and images) that can be used to identify that individual either on its own or when easily combined with other information. All forms of data that fall under this definition, including those on the blockchain, are covered by the PIPA regardless of the format (e.g., encrypted, pseudonomized, etc.).

As such, the data stored on blockchains and its participants would be subject to compliance with the PIPA. In respect of any personal information being processed in the blockchains, the participants in the blockchain could be characterised as data controllers and data processors under the PIPA. Also, if an entity/person receives, process, stores, or transfers any personal information to a third party, the PIPA will require that such a person first seek and obtain consent from data subject. As blockchain technologies require all data to be spread across and stored in multiple locations, any new participant to a blockchain would be granted with access to all data previously stored in the blockchain, which might include personal information. In such a case, sharing personal information with a new participant to the blockchain could trigger the abovementioned consent requirement under the PIPA.

Finally, any person who has collected personal information is required to destroy that personal information once it has been used for the purpose which prompted its collection or after the lapse of any agreed upon holding period. However, blockchain technology is designed to secure the integrity and irreversibility of any data stored in the blockchain. As such, this makes it almost impossible to make any data alterations or deletions.

21. **Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?**

Although there are no explicit border restrictions or obligations to declare cryptocurrency holdings, the Foreign Exchange Transaction Act (FETA) and the Foreign Exchange Transactions Regulations (FETR) regulate the remittance of funds out of Korea to overseas accounts for fiat currencies. The FETA prescribes certain procedures and documents for each type of transaction listed in the FETA for both the remitter of funds and the banks handling the remittance. Each type of transaction has different procedures and requirements to remit
funds overseas. Neither the FETA nor the FETR have guidelines regarding cryptocurrencies, but in practice Korean banks generally decline to process foreign exchange transactions related to cryptocurrency trading, even if the amount of such transactions is below the monetary limits that would trigger the reporting requirements under the FETA.