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NAVIGATING THE REGULATORY LANDSCAPE: SOUTH KOREA'S CURRENCY REGULATIONS

Abstract

This article delves into the intricate web of currency regulation in South Korea, exploring the comprehensive framework governed by acts such as the Real Name Financial Transactions Act and the Financial Transaction Reports Act. The regulatory landscape is examined within the context of the rapidly evolving world of cryptocurrencies, where collision problems arise from the interplay between stringent governmental measures and the operational concerns of banks and cryptocurrency exchanges. Recent legislative changes, including requirements for real-name accounts and increased reporting thresholds for foreign currency transfers, have introduced challenges and sparked debates within the financial ecosystem. The collision problem exemplified by the reluctance of banks to partner with cryptocurrency exchanges underscores the delicate balance required in regulating innovative financial technologies. As South Korea navigates these regulatory waters, the article highlights the need for ongoing dialogue, potential amendments, and international cooperation to foster a regulatory environment that accommodates both stability and innovation.

Keywords

South Korea, Currency Regulation, Financial Transactions, Financial Transaction Reports Act, Customer Due Diligence (CDD), Regulatory Framework, Collision Problems, Foreign Currency Transfers, Digital Assets, Regulatory Compliance, Korea Financial Intelligence Unit (KFIU), Banking Partnerships, Economic Expansion.

Currency regulation jurisdiction refers to the legal authority that a country or an organization has over the regulation of currency transactions within a specific geographical area. This includes the power to regulate the exchange rates, currency conversions, and other monetary transactions. In the context of digital currencies, the jurisdiction of currency regulation can be complex due to the global and borderless nature of digital currencies. Different countries have different regulations and restrictions on digital currencies, which can lead to questions of overlap and jurisdiction. Some countries have imposed outright bans on digital currencies, while others are staunch advocates. The regulatory framework for digital currencies is evolving rapidly and changing quickly.

Delving into the currency regulation jurisdiction in South Korea, it has a comprehensive framework for currency regulation, which is primarily governed by the Act on Real Name Financial Transactions and Guarantee of Secrecy (the "Real Name Financial Transactions Act") and the Financial Transaction Reports Act.

In Korea, financial institutions are required to conduct customer due diligence (CDD) under these acts. The Real Name Financial Transactions Act, enacted in 1993, establishes the framework for basic CDD measures. It effectively prohibits the opening or maintaining of anonymous accounts or accounts under fictitious names, and requires financial institutions to check and verify the real name of their customers. CDD is required when opening new accounts and for occasional financial transactions above the designated threshold of KRW 20 million (equivalent of approximately 15,468 USD) An occasional transaction is a financial transaction carried out without an opened financial institution account. The Korean government amended the Financial Transaction Reports Act in March 2012 and the Act came into force in March 2013. Article 17 of the act stipulates an administrative fine of KRW 10 million (USD 9,000) or less for CDD or CDD obligation violators, imposing sanctions on financial institutions and their employees for violating customer due diligence obligations.

When we talk about Foreign Currency Transfers, offshore wires of up to $100,000 won't have to be reported to financial authorities from as early as end of June. The amount has been doubled from the previous $50,000. Companies will have to report to the Finance Ministry and the Bank of Korea on foreign currency loans amounting to $50 million, rather than the previous $30 million.

These regulations are part of South Korea's efforts to boost investments and prop up the Korean economy. The government argues that the various foreign currency restrictions were relics that were implemented from the 1960s when the country was still short on foreign currency reserves. It argues that today, the same regulations have been applied without the consideration of the economic expansion that the country has seen.

Collision problems in currency regulation law typically occur when the laws of one country conflict with those of another, or when domestic laws conflict with international standards or agreements. In the context of South Korea, such collision problems could arise due to the country's strict regulations on financial transactions, including those involving cryptocurrencies. For instance, South Korea has implemented strict measures to regulate the trading and use of virtual currencies, such as requiring real-name bank accounts, acquiring ISMS certification[1], and implementing AML-KYC procedures[2]. These regulations have resulted in pushback by banks and concerns that many of the altcoins and cryptocurrency exchanges that have sprung up in South Korea could be put out of business.

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[1] ISMS stands for "Information Security Management System". It's a documented system that describes a company's approach to information security and privacy. It consists of security controls that protect the confidentiality, availability, and integrity of company assets and protects them from data breaches, external threats, and vulnerabilities. Acquiring ISMS certification means that an organization has established, implemented, maintained, and continually improved an information security management system. This certification demonstrates that the organization has put in place a system to manage risks related to the security of data owned or handled by the company, and that this system respects all the best practices and principles enshrined in the ISO/IEC 27001 standard.

If a collision problem were to occur, it could potentially lead to legal disputes, financial losses, and a disruption of financial services. The resolution of such problems would likely involve diplomatic negotiations, amendments to existing laws, or the establishment of new international treaties or agreements.

In March 2021, South Korea passed new legislation to strengthen the supervision of virtual assets. The new law required all virtual asset management providers, which includes cryptocurrency exchanges and other virtual asset service providers, to register with the Korea Financial Intelligence Unit (KFIU) to operate in South Korea.

However, this law resulted in pushback by banks and concerns that many of the altcoins and cryptocurrency exchanges that have sprung up in South Korea could be put out of business. This is because, under the new legislation, exchanges are required to partner with domestic banks to establish real name accounts for their clients. South Korean banks, however, have been reluctant to partner with cryptocurrency exchanges as a result of negative comments by regulators on virtual assets and the risk of financial crimes on cryptocurrency exchanges.

This reluctance of banks to partner with cryptocurrency exchanges means that all but a few South Korean cryptocurrency exchanges could be forced out of business.

To continue operating, exchanges need to partner with a South Korean bank, but with South Korean banks unwilling to take on the risk that comes from dealing with cryptocurrency exchanges, they will be unable to register with the

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[2] AML stands for “Anti-Money Laundering”, while KYC stands for “Know Your Customer”. These are systems of laws, regulations, and security measures designed to prevent and combat money laundering and terrorist financing. AML refers to all regulatory processes in place to control money laundering, fraud, and financial crime, while KYC is the risk-based approach to customer identification and verification that forms part of AML requirements. This includes verifying customer identity, establishing the level of risk they might pose, and then monitoring them throughout the relationship. These procedures are not only essential for protection, but also a legal requirement.

government or withdraw money for cryptocurrency trading after September 24. This is an example of a collision problem where the new law, intended to regulate virtual assets and prevent financial crimes, conflicts with the existing practices and concerns of banks and cryptocurrency exchanges. The resolution of such problems would likely involve amendments to existing laws, negotiations between the involved parties, or the establishment of new agreements.

As of the new legislation in March 2021, cryptocurrency exchanges in South Korea are required to register with the Korea Financial Intelligence Unit (KFIU) and partner with a domestic bank to establish real-name accounts for their clients. However, banks have been hesitant to partner with these exchanges due to the perceived risks and negative comments by regulators on virtual assets. This has led to a situation where many cryptocurrency exchanges could potentially be forced out of business. If they fail to secure a partnership with a bank, they would be unable to register with the government or withdraw money for cryptocurrency trading after the deadline.

This collision problem highlights the challenges of regulating emerging financial technologies and the need for a balanced approach that protects consumers and financial stability, while also allowing for innovation. It also underscores the importance of clear and consistent communication from regulators to avoid confusion and uncertainty in the market.

Summary

This article provides a comprehensive exploration of South Korea's currency regulation framework, focusing on its intersection with the dynamic landscape of cryptocurrencies. Governed by acts such as the Real Name Financial Transactions Act and the Financial Transaction Reports Act, South Korea's regulatory environment undergoes scrutiny amid the evolving realm of digital assets. The discussion encompasses the intricacies of customer due diligence (CDD), challenges posed by stringent regulations on cryptocurrency exchanges, and recent legislative changes affecting foreign currency transfers. Notably, the collision

problem emerges as banks hesitate to partner with exchanges, potentially impacting the viability of many within the cryptocurrency sector. The article underscores the delicate balance required for effective regulation, emphasizing the need for ongoing dialogue, potential amendments, and international cooperation to navigate the complexities of financial innovation while ensuring stability.

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