

KOREA'S CRYPTO CRAZE

South Korea plays an outsized role in the global cryptocurrency market, and lawyers there have been busy helping companies based in the country as well as abroad with everything from raising money through a new digital currency venture, to navigating the changing, and occasionally confusing, regulatory landscape.

BY JOHN KANG

■ South Korea may be a small country in both area and population, but it plays a big role in the world of cryptocurrency. The country accounts for less than two percent of the global economy, but accounts for as much as 20 percent of all bitcoin trades around the world, making it the third-biggest bitcoin market by trade volume, according to digital currency website Coinhills.

It's estimated about three million people, including students and housewives, in South Korea have invested in digital currencies. There are more than a dozen cryptocurrency exchanges in the country, according to the Korea Blockchain Industry Association, including some of the biggest in the world.

"Cryptocurrency did not simply grow in popularity in Korea in 2017," says Steve

Ahn, a partner at Korean firm Seum. "We believe it entered the mainstream."

"For most of last year, cryptocurrency investment remained an interest of techies and millennials," he notes. "However, in the last two months of 2017, cryptocurrency's entry into mainstream consciousness was evidenced by massive inflows of capital into the Korean crypto exchanges and soaring prices, and talk of cryptocurrency dominating news headlines, workplace discussions and dinner conversations in Korea."

There's been such an inflated demand for digital currencies in South Korea that prices there have been higher than at other overseas exchanges – around 20 percent for most of the time, though have hit 50 percent in early January – and this premium South Koreans paid was so persistent that

traders dubbed it "kimchi premium." As of writing, the price gap narrowed to about five percent as authorities took several steps to regulate and restrict trading.

This explosion of cryptocurrency interest and investment in the country has been constantly supplying lawyers in South Korea – still a relatively restrictive legal market for foreign firms – with a variety of work.

CRYPTO WORK

Seum does general corporate work as well as regulatory work for clients in the cryptocurrency space. Their crypto clients can be broadly classified into three categories: blockchain startups, crypto funds and crypto exchanges.

These three categories can be further classified between domestic



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and international clients, and the type of work they do differs per category. For example, blockchain startups based out of Korea often ask Seum to act as lead counsel for their initial coin offering (ICO).

An ICO is like an IPO, except instead of raising money for shares of a company, an ICO raises money for a new digital currency venture. This type of fundraising is unregulated and anyone can buy in a crowdsale, so startups see it as a cheaper and faster alternative to venture capital funding, which is regulated, rigorous, and usually reserved for an elite group of investors. Last year, ICOs were used to raise more than \$3 billion globally.

“ICO work definitely keeps us the busiest for a number of reasons: regulatory developments in this space occur at a dizzying pace and ICO projects involve many moving parts, and span multiple jurisdictions and languages,” says Ahn – who, before joining Seum, was the chief legal officer and head of Korea for the startup incubator TriBeluga.

For Korean firm Yulchon, a large part of legal work regarding cryptocurrency is currently centred on establishing cryptocurrency exchanges and regulatory issues concerning exchanges, arbitrage transactions, and ICOs.

“Legal demand is not just limited to Korean exchanges,” says Gun Kim, a partner at Yulchon. “Foreign exchanges incorporated as legal entities are increasingly seeking advice as they are particularly concerned about potential criminal charges they might face in the Korean market. Exchanges based in Europe, the U.S., and China mostly seek advice on whether their foreign exchange business such as international money transfer and arbitrage is, in any way, in violation

of Korea’s Foreign Exchange Act and Regulation.”

In South Korea, only licensed banks and brokers can offer foreign exchange services. Local companies and residents who move more than \$3,000 out of the country at a time must submit documents to tax authorities explaining reasons for the transfers. Annual overseas transfers of more than \$50,000 must also be reported with similar documents.

Bae, Kim & Lee, one of the largest firms in Korea, has a taskforce dedicated to advising on cryptocurrency and blockchain technology. The taskforce is composed of over 30 professionals – including 17 partners – from various practice groups, including financial regulatory, TMT, fair trade, tax, intellectual property, criminal defense, and government policy and regulation.

“BKL’s blockchain task force has advised clients on a variety of matters, including the review of the structure of cryptocurrency issuance under Korean securities regulations, the establishment of cryptocurrency-related business entities, the operation of cryptocurrency exchanges, as well as compliance with personal information protection requirements,” shares Sky Yang, a partner at the firm.

As the Korean government prepares to regulate cryptocurrency and the exchanges on which they are traded, the task force is currently placing greater focus on analysing policy direction regarding the cryptocurrency market.

“Due to the sharp increase in cryptocurrency transactions in Korea, new regulations and policies have been introduced and legal issues surrounding cryptocurrency transactions are increasingly gaining public attention,” notes

Park Jong-baek, a partner at BKL. “Consequently, law firms are facing growing demand for legal services in the cryptocurrency sector, including the issuance and trading of cryptocurrencies, value-added tax and capital gains tax issues, fair trade issues arising from terms and conditions of cryptocurrency exchanges, data protection issues, technical issues, regulatory issues and criminal issues.”

LACK OF CLARITY

All this legal work is fuelled by a cryptocurrency craze that’s gripped the country, where the government has been trying to calm and cool the overheated market.

“Cryptocurrency is a hot topic in Korea, and a heated discussion on regulating cryptocurrency continues unabated. The craze around it is growing at such an alarming pace that the government can no longer delay action to regulate the market,” says Yulchon’s Kim. “But currently, there is no clear-cut as to what is allowed and what is not allowed under the existing laws and regulations.”

There has been confusion and conflicting comments from the government. For example, the justice ministry proposed in late December to shut down all local cryptocurrency exchanges, but after more than 200,000 Koreans signed a petition in January denouncing the justice ministry’s proposal, the government, in February, signalled that it won’t do that, and instead will focus on regulating the exchanges and making cryptocurrency trading more transparent.

“So at this moment, the government sent a message to the market that most of controversial issues concerning

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cryptocurrency is simply not allowed until a new legislation is prepared,” says Kim. “A lack of clear guideline is a major reason behind the rise of irregular form of transactions in the cryptocurrency market.”

The latest signal, as of writing, is the government saying on Feb. 14 that it would take firm action against illegal and unfair acts in cryptocurrency trading, according to Reuters.

“The government’s basic rule is to prevent any illegal acts or uncertainties regarding cryptocurrency trade, while eagerly nurturing blockchain technology,” Hong Nam-ki, minister of the office for government policy co-ordination, said in a statement.

“But, the government is still divided with many opinions ranging from an outright ban on cryptocurrency trading to bringing the institutions that handle the currency into the system,” Hong said, adding that the government will thoroughly review the industry within global norms.

“Under the existing laws, it is not clear exactly what part of cryptocurrency is subject to regulation, and there are many legal loopholes,” explains Kim. “Hence, relevant laws and regulations must be newly legislated, but it will certainly take time.”

“Until then, regulatory authorities will monitor the market closely and encourage the market participants to come up with self-regulatory measures, or the government will try to influence the market indirectly via financial regulatory authorities. All in all, a radical approach is not expected as cryptocurrency is a sensitive issue that has a huge impact on society.”

“In short, a certain form of regulation will surely be adopted, although it may take time to introduce new legislation for areas that have an immediate impact on the public and the exchanges,” he adds.

REAL REGULATIONS

In between all the talks and statements, some regulations have already been implemented.

Since January 30, minors and foreigners were banned from opening new cryptocurrency accounts in South Korea. Authorities also banned the use of anonymous bank accounts for cryptocurrency trading designed to stop virtual coins from being used for crimes such as money laundering.

“The Financial Services Commission (FSC) requires financial institutions to proceed with an enhanced due diligence process when interacting with cryptocurrency exchanges,” notes Lee Jae-in, a partner at BKL, who previously worked at the FSC.

“In addition, the FSC announced that some specific types of financial transactions – which include the withdrawal and remittance of funds, among others – between cryptocurrency exchanges and customers will be deemed to be transactions with signs of ‘suspicious transaction’, and financial institutions must further investigate the transactions in order to determine whether such financial transactions constitute money laundering activities.

“We think that the imposition of anti-money laundering obligation on cryptocurrency transactions and discussions on the taxation for cryptocurrency transactions will be the starting point of introducing cryptocurrency related

business within the legal system,” she says.

“It seems that the reason the government and some lawmakers initially started the debate about the first steps to institutionalise the cryptocurrency industry is due to the large number of Korean residents who use the country’s cryptocurrency exchanges, most of whom tend to be younger,” she adds.

And in September, the financial regulators said they will prohibit all forms of ICOs in the country as trading of cryptocurrencies needs to be tightly controlled, reported Reuters. The government has been worried about financial scams stemming from ICOs.

China was the first country to ban ICOs at the end of last year, and later also banned all cryptocurrency trading in September.

FUTURE

The government and authorities will continue to propose and implement new regulations, and lawyers expect even more legal work to come.

“Whenever new or proposed government regulations are announced, request for legal services on the interpretation of such new or proposed regulations has increased, and as governmental policies on taxation measures have yet to be announced, there has not been much demand for tax-related legal services,” says Juho Yoon, a partner at BKL. “But it is expected that the demand will increase if governmental policy on taxation measures is announced in the future.”

And it did. On January 22, the government announced that cryptocurrency exchanges, like other corporations,

would need to pay 22 percent corporate tax and 2.2 percent local income taxes this year if they had an annual income of over 20 billion Korean won last year, South Korea's Yonhap news agency reported.

"In addition, the request for legal consultation related to cryptocurrency legislation is expected to increase due to pending legislation in the National Assembly and the increasing interest in cryptocurrency demonstrated by National Assembly members," he adds.

In January, the Ministry of Justice announced on multiple occasions that it plans to propose legislation to ban cryptocurrency trading entirely. But shortly afterwards, the Ministry of Strategy and Finance as well as the Blue House publicly stated that there are no plans to shut down cryptocurrency trading.

Seum's Ahn believes that it is unlikely that such a proposal would be adopted by the National Assembly considering members of the majority and minority parties have expressed opposition to a ban on cryptocurrency exchanges.

But if cryptocurrency trading was banned, the firm would see a significant reduction in our crypto-related legal work, he says.

"On the contrary, if legislation is passed to regulate cryptocurrency, we believe (subject to the nature of the legislation) this could signify 'legitimacy' for this new and relatively unregulated industry and will help stabilize the market," he says. "In this case, we expect to see continued demand for legal services in this area."

Currently, legal demand is mostly centred on advising on cryptocurrency regulations, and it will only grow regardless of whether or not the government adopts regulatory measures, notes Yulchon's Kim.

"And after some time, various form of cryptocurrency disputes is expected to rise, meaning more litigation work for law firms. Increasing disputes will, in turn, stimulate more demand in advisory services," he adds.

"New industry and new regulation always bring unexpected legal issues, creating a blue ocean for legal service providers." ^{ALB}

South Korean intelligence says N. Korean hackers possibly behind Coincheck heist – sources

BY CYNTHIA KIM; WITH ADDITIONAL REPORTING BY KAORI KANEKO OF REUTERS

South Korea's intelligence agency told lawmakers North Korean hackers could have been behind the \$530 million theft of virtual coins from a Japanese cryptocurrency exchange last month, people familiar with the matter told Reuters on Feb. 6. The people, who had knowledge of parliament's intelligence committee proceedings, told Reuters the National Intelligence Service did not present evidence that North Korean hackers were responsible for one of the largest cryptocurrency heists in history but flagged it as a possibility.

Local media earlier on Tuesday reported the spy agency told the intelligence committee North Korean hackers had "probably" hacked into the Tokyo-based exchange.

One of the people who spoke to Reuters said that according to the spy agency "it's a possibility that North Korea was behind the theft."

The person said the virtual coin market remains a likely target for North Korean hackers due to its sheer size and light regulation but that there was no firm evidence the North was responsible.

Last month, Coincheck, one of Japan's biggest cryptocurrency exchanges, said it had about 58 billion yen (\$530 million) worth of NEM virtual coins stolen and that it would return 46.3 billion yen to investors who had lost funds.

The other person who spoke to Reuters said "it's possible, but not a probable scenario backed by evidence" that North Korea was behind the theft.

Both people Reuters spoke to declined to be named due to the sensitivity of the issue. A spokesperson with the NIS declined to comment.

The reports have reignited speculation Pyongyang could be unleashing cyberattacks once again. The U.S. has publicly blamed North Korea for launching the so-called WannaCry cyberattack that crippled hospitals, banks and other companies across the globe in 2017.

A South Korean lawmaker on Monday said North Koreans were responsible for billions lost in theft from local cryptocurrency exchanges in 2017. "North Korea sent emails that could hack into cryptocurrency exchanges and their customers' private information and stole (cryptocurrency) worth billions of won," Kim Byung-kee, a member of South Korea's parliamentary intelligence committee, said on Feb. 5. Kim did not disclose which exchanges were hacked.

The reports also come as Japan rushes to clean up cryptocurrency markets after the Coincheck theft.

Japanese authorities on Friday swooped on Coincheck with surprise checks of its systems and said it had asked the exchange to fix flaws in its computer networks well before the theft. Japan's top government spokesman, Chief Cabinet Secretary Yoshihide Suga, said on Tuesday Japan gathers and analyses information on North Korea's cyberattack capabilities but declined to comment on specific analysis. "We acknowledge how we deal with cyber attack is an important issue for our nation's security, crisis management and the economic growth," Suga told reporters in his regular morning presser. "We would like to respond in cooperation with the international community with a sense of urgency." ^{ALB}