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## Key Issues Related to NFT (3)

Kim & Chang's Fintech & Virtual Asset Team would like to discuss potential legal issues and considerations related to Non-Fungible Tokens ("NFT"). This Part 3 provides a general overview of the legal issues related to blockchain games including NFT games.

### I. Overview

Blockchain-based games have recently been in the spotlight following the success of "Axie Infinity," which was lauded as a blockchain game, as well as "MIR4," a game recently developed by "WeMade Co. Ltd." incorporating blockchain technology, to which more than 1.3 million users worldwide tried to connect simultaneously. As evidenced by the success of these games, the popularity of blockchain games is gaining steam in the game industry, and in response, major Korean game companies are trying to release games that apply blockchain technology.

However, there are unresolved legal issues with regard to the provision of blockchain game services in Korea, and the recent decision by the Game Rating and Administration Committee (the "GRAC") to revoke and refuse the rating of all game products that allow NFTs minting of game items is a prime example. In this newsletter, we provide an overview of the legal issues surrounding blockchain games where NFTs or virtual assets can be acquired. Please note that not all legal issues are covered in this newsletter, as legal issues may vary depending on the specific business and/or circumstance.

### II. Legal Issues of Blockchain Games

#### 1. Regulations on "Speculation"

According to the Game Industry Promotion Act (the "GIPA"), the GRAC may refuse to assign a rating in the following cases: (i) application for rating any activity or device subject to regulation or punishment under the provisions of other laws such as the Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, Etc. (the "Speculative Acts Act") and the Criminal Code; (ii) application

for rating without a justifiable title, or by fraud or other improper means; or (iii) application for rating of any game product that constitutes a speculative game product. Also, if the GRAC becomes aware that an already-rated game product is subject to the foregoing grounds for refusal of rating, it must revoke the given rating.

Speculative game products refer to, among others, game products of which the outcome is determined by chance, resulting in gain or loss of property based on the outcome (Article 2, Subparagraph 1-2 of the GIPA). In addition, the term “speculative act” means any act to cause gain or loss of property by collecting goods or benefits from such property from multiple persons and by determining the gain or loss by coincidental means (Article 2, Paragraph (1), Subparagraph 1 of the Speculative Acts Act). The Speculative Acts Act prohibits, among others, the act of carrying out speculative business without obtaining a proper license. Further, entities engaged in a business relating to game products (e.g., game producers, distributors and providers) are required to comply with the regulations on speculation under the GIPA – in particular, game companies must not enable or allow any person to engage in gambling or other speculative acts through their game products, and must not encourage speculation by providing free gifts or other means. A person who is in violation of these obligations may be subject to a criminal punishment and/or lead to a revocation or refusal of rating for the relevant game product, which would make it difficult to provide the game service in Korea.

In fact, the GRAC revoked or refused the rating of a number of game products where NFTs or virtual assets can be acquired, citing violation of Article 28 of the GIPA as grounds therefor. As a result, there are a growing number of game companies that are seeking to release their blockchain games outside Korea – e.g., the game “MIR4,” which is developed by a Korean game company Wemade, is provided as a blockchain game service in various countries but not in Korea. Considering the foregoing, game companies should have a clear understanding of the regulatory issues surrounding speculation to avoid any potential compliance risks.

## **2. Regulations on Money Conversion**

The GIPA prohibits “anyone from engaging in a business of converting tangible and intangible results obtained through the use of games into money or arranging for a conversion into money” (“Regulations on Money Conversion”). The Enforcement Decree of the GIPA stipulates that the subject of the Regulations on Money Conversion includes game money (i) that becomes a means of betting or allotment or acquired by chance when using a game, or (ii) produced or acquired through abnormal use of games. Violation of the Regulations on Money Conversion may result in criminal penalties.

Since the scope of application of these Regulations on Money Conversion is limited, these regulations are not always applicable just because it is possible to mint and sell NFTs in blockchain game services. For example, in 2009, the Korean Supreme Court ruled that the defendant who was indicted for violating the Regulations on Money Conversion is not subject to the application of the Regulations on Money Conversion on the grounds that the game money “Aden” earned from the game “Lineage” is more dependent on the player’s efforts or abilities than mere chance. Therefore, prior to releasing a blockchain game, it is necessary to review the applicability of the Regulations on Money Conversion.

### 3. Whether NFTs related to Games Constitute Virtual Assets

If an NFT is viewed as virtual assets as defined in the Act on the Reporting and Use of Specific Financial Transaction Information (the “AML Act”), it may be subject to the Specific Financial Information Act, including the provisions regulating virtual asset business operators. Therefore, it would be necessary to conduct a close review regarding the applicability of the AML Act before launching a blockchain game using NFTs. As explained in our previous newsletter on NFT, under the Specified Financial Information Reporting Act, virtual assets refer to electronic certificates (including any and all rights thereto) that have economic value and can be traded or transferred electronically. However, “tangible and intangible results obtained through the use of game products under Article 32, Paragraph (1), Subparagraph 7 of the GIPA” are excluded from the scope of virtual assets. Therefore, the specific scope of “tangible and intangible results obtained through the use of game products under Article 32, Paragraph (1), Subparagraph 7 of the GIPA,” which are excluded from virtual assets, would be particularly important.

The regulatory authorities take the view that when determining whether a particular NFT falls under the definition of virtual asset under the Specified Financial Information Reporting Act, the specific circumstances such as rights and purposes inherent in such NFT should be considered in totality of the circumstances. Therefore, if a game company intends to release a blockchain game using NFT, it should review (i) whether the NFT would be viewed as virtual assets under the AML Act, and (ii) whether it would be deemed as a virtual asset business operator.

### 4. IP Issues related to NFT Games

The biggest feature and charm of NFT games is that certain rights to items or characters in such games can be transferred to users from game companies. Accordingly, in terms of IP, it is necessary to clearly define the rights of the parties involved. For example, if a game company mints an item or character with an NFT, the scope of the use of NFTs (e.g., whether users can only use the NFT for non-commercial purposes, such as posting NFTs on their social media accounts, or whether users can be granted a wide range of copyrights for NFTs, items, and characters) should be specified in the terms of use. (For IP issues regarding NFT, please refer to our previous newsletter on this topic).

### 5. Issues relating to Blockchain Games Released Overseas

As it may be difficult to resolve all the potential legal issues under the Korean regulations as explained above, many Korean game companies nowadays use their overseas subsidiaries to launch blockchain games. In such case, game companies may face various legal issues under the laws of the relevant jurisdictions as well as under Korean laws, such as financial regulations for the operation of virtual assets, NFTs, and related services, as well as game regulations, all of which requires a careful review in advance.

For example, if a game company considers operating a blockchain service platform in a foreign country that allows users to exchange NFTs obtained by minting items that they have obtained while playing games with virtual assets listed on virtual asset exchanges or allows users to trade NFTs, the company may decide whether to enter into the relevant market based on the analysis of the legal nature of the NFT, licensing issues under the local law, and other issues under financial laws and regulations regarding the

following: (i) issuance, storage, transfer, and brokerage of exchange/sale of NFTs; (ii) storage of related virtual assets; and (iii) transfer, exchange, and trading services.

In addition, recently, overseas game companies raise funds for game development by minting game items or characters with NFTs and selling them before releasing a game or granting or guaranteeing various rights to those who acquire NFTs when selling NFTs. In such case, companies should note that there may be legal issues in relation to the issuance, sale, and brokerage of NFTs under securities and foreign exchange regulations, and mitigate risks arising from such issues by reviewing in advance.

### **III. Conclusion**

To summarize, if a game company intends to launch a blockchain game in Korea, it would be necessary to review legal issues under the GIPA and the Specified Financial Information Reporting Act, and if it intends to launch a blockchain game outside Korea, it would be necessary to thoroughly review legal issues under the laws of the relevant jurisdiction and also applicable laws of Korea including the Foreign Exchange Transactions Act. Such review will enable the company to design a game with lower risk and establish strategies for releasing games tailored to each country. Promptly identifying and comprehensively assessing legal risks under the laws applicable to service providers, related entities, and users would be the key to successful launch of blockchain games.

Responsible Attorneys

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**Hyun Ho EUN**  
+82-2-3703-1068  
hheun@kimchang.com

**Joon Young KIM**  
+82-2-3703-1824  
joonyoung.kim@kimchang.com

**Mooni KIM**  
+82-2-3703-1414  
moonikim@kimchang.com

**Gye-Jeong KIM**  
+82-2-3703-4550  
gyejeong.kim@kimchang.com

**Jung-Chull LEE**  
+82-2-3703-1163  
jungchull.lee@kimchang.com

**Kevin Kyungha LEE**  
+82-2-3703-1073  
kyungha.lee@kimchang.com