

IBA 4th Asia-based International Finance Law Conference

**Session three: Fintech's impact on Asian financial markets II:
the regulatory and legislative developments in stablecoins**

South Korea

30 March 2023

Chloe (Jung-Myung) Lee (Partner at Lee & Ko; chloe.lee@leeko.com)

- **Current laws**

- **Anti-Money Laundering**

- ✓ Act on Reporting and Using Specified Financial Transaction Information: Requires Virtual Asset Service Providers (VASPs) as defined thereunder to report to the financial authority (KoFIU) and implement measures necessary for anti-money laundering

- **Tax**

- ✓ Income Tax Act: Amended in Dec. 2020 to allow taxation on capital gains on transfer or lending of virtual assets, which is suspended until the end of 2024
 - ✓ Corporate Tax Act & Inheritance and Gift Tax Act: Following the negative (inclusive) system in handling income generated from virtual assets, even before the above-mentioned amendment in Dec. 2020, serves as the statutory basis for taxation for domestic (corporate) income, and for inheritance and gift taxes, respectively
 - ✓ Adjustment of International Taxes Act: Virtual asset trading accounts in scope for foreign financial accounts reporting

- **Financial authorities' administrative guidance**

- Banning of ICOs and restriction of financial companies' crypto related activities since Sept. 2017
 - The FSC(Financial Services Commission)'s 'Guidelines on Security Tokens' announced on 6 Feb. 2023

- Stablecoins not widely used in Korea. Also, no separate law/regulation on stablecoins yet
- Broad definition of 'Virtual Asset' under Korean law (i.e., the Act On Reporting And Using Specified Financial Transaction Information): "electronic certificates (including all rights thereto) that have economic value and that can be traded or transferred electronically" with certain enumerated exceptions

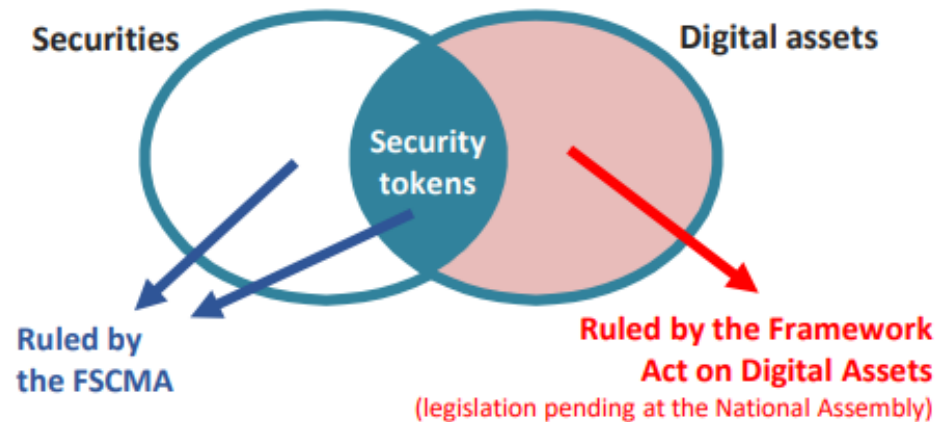
Accordingly, current laws and administrative guidance applicable to 'Virtual Asset' to apply to stablecoins as well

- Issues:
 - ✓ Current regulation has limited application to anti-money laundering and tax
 - ✓ No regulation tailored for stablecoins like Markets in crypto-assets (MiCA) of EU



- **Necessity to have a law regulating digital assets in general in addition to AML regulation:**
 - The need to enact the Framework Act on Digital Assets was raised, more prompted by Terra–Luna/ FTX cases.
 - Several bills have been proposed to the National Assembly, which aim customer asset protection, restriction of unfair trading, regulation of issuance, listing and disclosure of digital assets, business conduct regulation, and regulatory licensing requirements
 - No specific discussions on regulating stablecoins yet → However, broad definition of ‘digital asset’ under the bills
- **The FSC’s announcement of the ‘Guidelines on Security Tokens’:**

The FSC’s announcement in Sept. 2022 to establish a regulatory system for ‘securities’ by regulating securities-type tokens by amending Korea’s capital markets law (the Financial Investment Services and Capital Markets Act) and other related laws → The FSC finally announced the ‘Guidelines on Security Tokens’ on 6 Feb. 2023.



- **Anti-Money Laundering**

- **Act on Reporting and Using Specified Financial Transaction Information**
(amended, effective in Mar. 2021)
 - ✓ Reporting Requirements for Virtual Asset Service Providers (VASPs)
 - ✓ AML Requirements for VASPs
 - ✓ Expanded CDD on Financial Companies



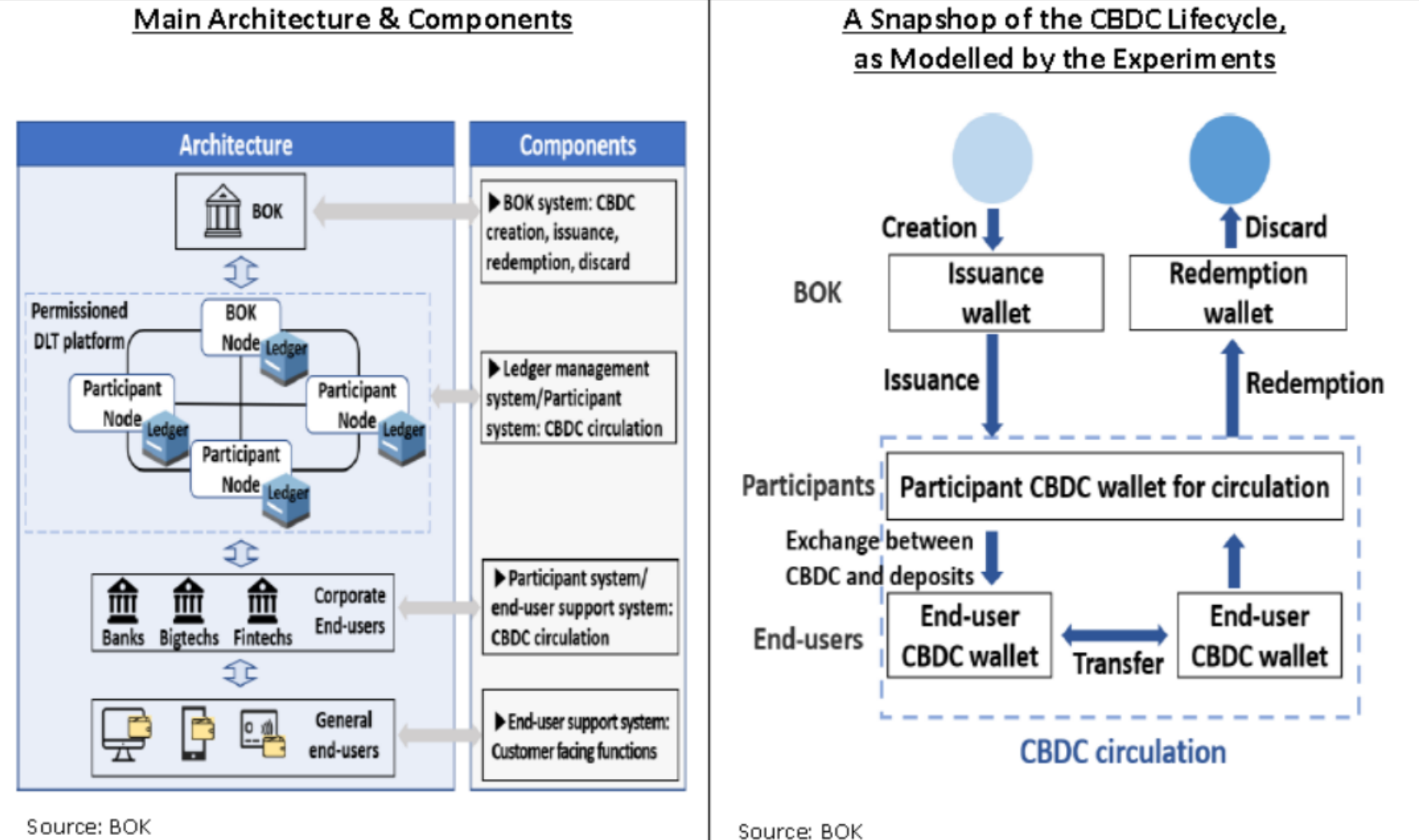
- **Combating the Financing of Terrorism**

- **Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction**
 - ✓ Provides for the criminalization of terrorist financing and designation of individuals and entities with whom financial institutions cannot conduct financial transactions without prior approval by the FSC
- **Act on Regulation and Punishment of Criminal Proceeds Concealment**
 - ✓ Criminalizes money laundering, and provides for the government's authority to preserve and confiscate criminal proceeds

Central Bank Digital Currencies (CBDC)

- The Bank of Korea (BOK) has not decided whether or not to issue a central bank digital currency (CBDC), nor has it selected any specific model or design features.
- The BOK undertook a series of proof-of-concept (PoC) experiments from August 2021 to June 2022 with the primary goal of testing the technical feasibility of a CBDC on a DLT based platform.

Figure 1. BOK's CBDC Test System – Architecture & Main Components





Thank you

Lee
& KO