September 4, 2026

STO VIA OFFSHORE STRUCTURES: FSC GUIDANCE

On August 20, 2026, the Financial Services Commission (the "**FSC**") issued a legal interpretation concerning a structure in which an offshore institutional investor issues and sells, in the form of security tokens, interests in an offshore fund that holds a money market fund ("**MMF**") issued by a Korean financial investment business entity (the "**Korean Entity**"). The FSC concluded that the issuance of those security tokens is an act performed outside Korea whose effects cannot be regarded as extending to Korea and is therefore not subject to the Act on Electronic Registration of Stocks, Bonds, Etc. (the "**Electronic Registration Act**") (Response to Request for Legal Interpretation, Serial No. 260142).

The interpretation is significant because it is the first publicly available legal interpretation to address the application of the Electronic Registration Act to an offshore tokenization structure using a Korean financial product as its underlying asset. It was issued during the transitional period before the security tokens regime takes effect on February 4, 2027. This newsletter provides an overview of the legislative developments concerning the security token regime, examines the substance and practical implications of the legal interpretation, and, for reference, introduces global trends in the tokenization of traditional securities.

I. BACKGROUND (LEGISLATIVE DEVELOPMENTS CONCERNING THE SECURITY TOKENS REGIME)

The FSC pursued legislation establishing the security tokens regime in accordance with the "Plan to Improve the Regulatory Framework for the Issuance and Distribution of Security Tokens" announced by the FSC in February 2023. The legislation was enacted after bills amending the Electronic Registration Act and the Financial Investment Services and Capital Markets Act (the "**FSCMA**") passed the plenary session of the National Assembly on January 15, 2026, and the resulting amendments were promulgated on February 3, 2026. The Amended Electronic Registration Act (Act No. 21318, partially amended on February 3, 2026; the "**Amended Electronic Registration Act**") will take effect on February 4, 2027, one year after promulgation, pursuant to its Addenda. The Amended FSCMA (Act No. 21324, partially amended on February 3, 2026; the "**Amended FSCMA**") will take effect, depending on the provision, on the date of promulgation, six months after promulgation (the proviso to Article 50(1)), or one year after promulgation (Article 166).[1]

The key feature of the Amended Electronic Registration Act is that it permits distributed ledger technology to be used for entries in the electronic register, which constitutes an official register under the Electronic Registration Act. Specifically, the Amended Electronic

1 See the FSC's January 15, 2026 press release, "Amendment Bills to the Electronic Registration Act and the FSCMA for the Introduction of Tokenized Securities and the Distribution of Investment Contract Securities Pass the Plenary Session of the National Assembly."

Registration Act makes four principal changes. First, it introduces definitions of "distributed ledger" and "distributed ledger-registered stocks, etc." (Articles 2(3)-2 and 2(4)-2 of the Amended Electronic Registration Act). Second, it provides a legal basis for electronic registration institutions and account management institutions to use distributed ledger technology and similar technologies for the electronic registration and management of "stocks, etc." (a defined term encompassing all categories of electronically registered securities), subject to certain requirements (Article 23-2 and other provisions of the Amended Electronic Registration Act). Third, it introduces the "issuer account management institution" regime. Under this regime, an issuer that satisfies prescribed requirements, including maintaining equity capital of at least the amount prescribed by Presidential Decree (at least KRW 1 billion), and registers with the FSC may electronically register the stocks, etc. it issues directly using distributed ledger technology and similar technologies, without going through a securities company or similar institution (Articles 19-2 through 19-5 of the Amended Electronic Registration Act). Fourth, it adds rights that can be or are to be represented by investment contract securities to the scope of "stocks, etc." subject to electronic registration (Article 2(1)(h) of the Amended Electronic Registration Act).

In parallel, the Amended FSCMA removes the restriction under which investment contract securities and certain other securities were treated as securities under the FSCMA only when provisions relating to issuance applied (Article 4(1) of the Amended FSCMA). It also streamlines the distribution regime by permitting transactions among multiple parties in connection with over-the-counter transactions conducted through an investment broker authorized for a business unit covering multilateral over-the-counter transactions (Article 166 of the Amended FSCMA).

On March 4, 2026, the government, relevant institutions, and private-sector experts launched a joint public-private "Security Tokens Consultative Body" to design the detailed framework for implementation of the amended statutes. At its second meeting, held on May 15, 2026, the Consultative Body reviewed matters relating to draft subordinate regulations and guidelines. In particular, it decided to prepare a phased roadmap for tokenizing traditional securities and for on-chain settlement, in light of the fact that tokenization attempts worldwide extend beyond new types of securities, such as fractional investment products, to traditional securities, such as stocks, bonds, and MMFs.[2] This indicates that the government is considering a phased expansion of tokenization beyond fractional investment products to traditional securities.

2 See the FSC's May 15, 2026 press release, "Second Meeting of the Joint Public-Private Tokenized Securities Consultative Body Held." The Consultative Body was launched on March 4, 2026, and at its second meeting, matters discussed in relation to the draft subordinate regulations and guidelines included best practice standards for the issuance of fractional investment products (eligibility requirements for underlying assets, disclosure in registration statements, etc.), authorization requirements for over-the-counter exchanges by type of security, the permitted scope of concurrent businesses and trading limits, and a phased roadmap for the tokenization of traditional securities and on-chain settlement.

Meanwhile, the draft subordinate regulations and guidelines were prepared for announcement in July 2026. As of the date of this newsletter, however, the FSC has not announced them, and further review is understood to be ongoing.

Until the Amended Electronic Registration Act takes effect on February 4, 2027, no legal basis exists for using a distributed ledger as an electronic register. The issuance of securities in tokenized form therefore remains impermissible in Korea. Against this backdrop, a practical question was whether tokenizing outside Korea an offshore product that holds a Korean financial product as its underlying asset would contravene the Electronic Registration Act. This legal interpretation is significant because the FSC has clarified its position on that issue.

II. SUBSTANCE OF THE LEGAL INTERPRETATION

A. Summary of the Inquiry

The inquiry assumed the following structure. First, the Korean Entity issues and sells an MMF, and an offshore institutional investor with no economic or legal relationship with the Korean Entity purchases the MMF through an offshore fund. Interests in that offshore fund are then issued and sold in the form of security tokens. Second, the offshore institutional investor sells the security tokens by private placement only to offshore investors and entirely prohibits resale to Korean residents through technical and contractual means. Given that the security tokens regime under the Electronic Registration Act has not yet taken effect, the inquiry asked whether the Korean Entity's sale of the MMF to the offshore institutional investor, with knowledge of the structure, could be regarded as a violation of the Electronic Registration Act.

B. Summary of the Response

The FSC stated that it would be difficult to characterize the arrangement as a violation of the Electronic Registration Act for the following reasons:

Under the proposed structure, an offshore institutional investor with no economic or legal relationship with the applicant (the Korean Entity) issues interests in an offshore fund established under the laws of the relevant offshore jurisdiction in the form of security tokens. Those security tokens are sold only to offshore investors, and resale to Korean residents is entirely prohibited.

Under this arrangement, the Korean Entity's MMF is merely the investment target of the offshore fund. Interests in the offshore fund are issued in tokenized form outside Korea, and the effects of that issuance cannot be regarded as extending to Korea. Accordingly, the issuance is not subject to the Electronic Registration Act.

Accordingly, the Korean Entity's sale of the MMF to the offshore institutional investor would be difficult to characterize as a violation of the Electronic Registration Act, even if the Korean Entity knows that the offshore institutional investor will issue security tokens.

The FSC expressly cautioned, however, that its interpretation may differ if, contrary to the premises of the structure, the security tokens are resold to Korean residents and thereby affect Korea. It may also differ if the Korean Entity and the offshore institutional investor are, in substance, treated as the same entity, such that the issuance of the security tokens is highly likely to be construed as an act of the Korean Entity.

III. SIGNIFICANCE OF THE INTERPRETATION AND PRACTICAL IMPLICATIONS

A. Territorial Scope of the Electronic Registration Act: An Effects-Based Approach

The Electronic Registration Act contains no express provision for extraterritorial application comparable to Article 2 of the FSCMA, which provides that "any activities conducted in a foreign country the effects of which extend to the territory of the Republic of Korea shall be governed by this Act." In this interpretation, the FSC took an effects-based approach: the Electronic Registration Act does not apply to an act performed outside Korea whose effects do not extend to Korea. The FSC has therefore effectively adopted a test for the territorial reach of the Electronic Registration Act similar to the FSCMA's approach to extraterritorial application. The interpretation therefore indicates that tokenization conducted outside Korea under applicable foreign law should fall outside the Electronic Registration Act where sales and resales to Korean residents are effectively blocked and the transaction otherwise has no effects in Korea.

B. Offshore Tokenization of Korean Assets

This interpretation confirms two points. First, the inclusion of a Korean financial product, such as an MMF managed and issued by the Korean Entity, as the underlying asset of an offshore tokenized product does not in itself raise an issue under the Electronic Registration Act. Second, the Korean Entity does not violate the Electronic Registration Act merely by selling the product to an offshore institutional investor with knowledge of the tokenization structure. Given the rapid growth of tokenization of stable, cash-equivalent assets such as MMFs and government bonds in global markets, driven primarily by institutional investors, the interpretation may provide a degree of predictability for businesses exploring global tokenized product structures based on Korean-managed assets.

C. Points to Note

Companies considering similar structures should note the following:

1. Maintain Effective Restrictions on Resales to Korean Residents

The key premise is that the security tokens are sold by private placement only to offshore investors and that resale to Korean residents is "entirely" prohibited. Companies should therefore implement layered technical and contractual controls — including smart-contract-level technical controls such as whitelist-based transfer restrictions, transfer-restriction covenants, and investor residency verification (KYC) — together with systems for continuous monitoring of whether those controls operate effectively at the distribution stage. Because the interpretation expressly states that its conclusion may differ where the security tokens are resold to Korean residents and thereby affect Korea, any deficiency in the resale-prohibition mechanisms may translate directly into regulatory risk for the Korean Entity. As discussed under (3) below, the resale prohibition is relevant not only to the Electronic Registration Act but also to the FSCMA's extraterritorial application. Strict compliance is therefore required.

2. Preserve the Offshore Investor's Independence

The conclusion may also differ if the Korean Entity and the offshore institutional investor are, in substance, treated as the same entity, in which case the issuance of the security tokens may be construed as an act of the Korean Entity. Companies should examine at the transaction-design stage whether the offshore institutional investor can be shown to be independent of the Korean Entity, taking into account affiliate relationships, equity and personnel relationships, profit-allocation arrangements, and de facto control over decision-making. They should document the supporting evidence.

3. Consider Other Korean Regulatory Requirements Separately

This interpretation is limited to whether the Electronic Registration Act applies. Companies must separately review reporting requirements under the Foreign Exchange Transactions Act for the issuance and acquisition of securities. They should also consider the FSCMA's extraterritorial application where investment solicitation or advertising is directed at Korean residents, among other matters. In particular, once any point of contact with Korean investors arises during distribution, issues such as a deemed public offering under the FSCMA and regulation of domestic sales of foreign collective investment securities may arise.

4. Monitor Developments Before and After the February 2027 Implementation

Following the February 4, 2027 effective date of the Amended Electronic Registration Act, the Korean security tokens regime will become fully operational. This will include requirements governing the use of distributed ledger technology and similar technologies (Article 23-2 of the Amended Electronic Registration Act) and the registration regime for issuer account management institutions. The authorities are also expected to specify, through subordinate regulations and guidelines, the scope of the phased expansion of tokenization of traditional securities. Because the regulatory authorities may revise their approach to offshore tokenization structures following implementation, companies should continuously monitor developments in the enactment and amendment of follow-up subordinate legislation.

IV. FOR REFERENCE: GLOBAL TRENDS IN THE TOKENIZATION OF TRADITIONAL SECURITIES

Outside Korea, tokenization of traditional securities, such as MMFs, government bonds, and other bonds, is entering the commercialization stage, particularly in institutional markets. Regulators are also responding by accommodating tokenization within existing securities-regulatory frameworks.

In the United States, institutional investors use tokenized government bond and MMF products, including BlackRock's tokenized money market fund BUIDL (launched in March 2024), for cash management and collateral purposes. On January 28, 2026, the SEC issued a joint staff statement confirming that existing securities laws apply to security tokens in the same manner as they apply to other securities. On August 12, 2026, the SEC issued a no-action letter permitting traditional registered funds to hold Franklin Templeton's tokenized MMF (BENJI) for cash management and securities-lending collateral purposes. On the infrastructure side, DTCC commenced live transactions involving the tokenization of traditional securities in July 2026 and is preparing for a full launch in October 2026. Nasdaq and the NYSE also obtained SEC approval in March and April 2026, respectively, for amendments to their exchange rules permitting tokenized trading of listed stocks and other instruments.

Elsewhere, major jurisdictions are likewise developing regulatory frameworks for the tokenization of traditional securities. These efforts include the EU's DLT Pilot Regime, which took effect in March 2023; the United Kingdom's Digital Securities Sandbox (2024); Hong Kong's multiple issuances of tokenized green bonds; and asset-tokenization pilots conducted by the Monetary Authority of Singapore (MAS) through Project Guardian.

These global trends help explain the Security tokens Consultative Body's decision to prepare a phased roadmap for tokenizing traditional securities. The structure contemplated by the legal interpretation—private-placement tokenization for offshore institutional investors—may likewise provide a channel through which Korean assets enter global tokenization markets. During the transitional period before implementation, commercialization through an offshore structure remains a viable path; after implementation, direct issuance under the Korean regime will become an additional option. Companies considering related businesses should therefore design their structures with both Korean and overseas regulatory developments in mind.

*   *   *

The Future Finance Strategy Center of Bae, Kim & Lee LLC provides a wide range of legal advice on clients' new business models, financial techniques, and information and communications technology, keeping pace with rapid changes in the financial markets and advances in technology. In particular, the Center is composed of professionals with experience at various relevant authorities, including the Financial Services Commission, the Financial Supervisory Service, the Ministry of Science and ICT, the Ministry of the Interior and

Safety, and the Personal Information Protection Commission. It accordingly presents comprehensive response strategies spanning regulatory advice on finance, ICT, data, and AI, the proposal of alternative models, and legislative solutions.

Specifically, the Center continues to monitor the enactment and amendment of subordinate legislation and related discussions in preparation for the implementation of the security tokens regime, and continues to conduct in-depth reviews in connection with the design of offshore tokenization structures and the review of Korean and overseas regulations.

Related Professionals

Jongbaek Park
Partner
T 02.3404.0135
E jb.park@bkl.co.kr

Jungmyung (Chloe) Lee
Partner
T 02.3404.5864
E chloe.lee@bkl.co.kr

Youngju Park
Partner
T 02.3404.0451
E youngju.park@bkl.co.kr

Eric Jeong
Foreign Attorney (New South Wales)
T 02.3404.6554
E eric.jeong@bkl.co.kr

This Legal Update was prepared with the support of Jeiyoung Kim, International Trade Researcher at Bae, Kim & Lee LLC.