
Japanese Virtual Currency Transaction Law System – with “Payment Services Act” as the Core

In recent years, because of the uncertainty of the positing of virtual currency under law, the issues of transparency and security etc. arising out in connection therewith are emerging, and the incidents of money-laundering, terrorist attack and investor fraud involving therewith lead to concerns of various countries.

Therefore, the new change in Japanese legislations relating to virtual currency exchange service providers falls mainly in the effect of amended contents of “Payment Services Act” and “Act on Prevention of Transfer of Criminal Proceeds”. The reasons for amendment to the legislations are such that virtual currency transaction involves the exchange with statutory currency, and is the outlet/ inlet of the existing financial system; therefore it is necessary to have the virtual currency exchange service providers be supervised^[1]. Essential points involving the amendments are stated as follows:

1. Payment Services Act

The keys to the amendment to Payment Services Act (hereinafter referred to as the “Act”) are the Act recognizes that virtual currency has the nature of property and inputs the registration system for the exchange service providers, and provides relevant supervisory regulations.

(1) Definition of virtual currency

As defined in items 1 and 2 of Paragraph 5 of Article 2 of the amended Payment Services Act, virtual currency can be divided into two kinds, but is limited to that which is recorded on an electronic device or any other object by electronic means, and excludes the domestic (Japanese) currency, foreign currency and currency-denominated assets^[2].

① It has 3 elements as follows:

It can be used in relation to unspecified persons for the purpose of payment consideration for the purchase or leasing of goods or the receipt of provision of services.

It can be purchased from and sold to unspecified persons.

Its property value can be transferred by means of an electronic data processing system.

② Its property value can be mutually exchanged with other virtual currency and can be transferred by means of an electronic data processing system.

In addition, some authors^[3] consider that virtual currency is equivalent to the use of blockchain technology. However, according to the definition after the amendment to laws in Japan, the definition of virtual currency is based the judgment of the above elements rather than the use of blockchain technology.

(2) Input of registration system for virtual currency exchange service providers

Pursuant to Paragraph 7 of Article 2 of the Payment Services Act, “Exchange Service” is defined as the operation of exchange, agency or management activities. No person may engage in the virtual currency exchange service unless the person is registered^[4] with the competent authority (Article 63-2 of the Act). A person who has conducted the virtual currency exchange service without obtaining the registration is subject to imprisonment for not more than three years or a fine of not more than three million yen or both based on Subparagraphs 2, 5 of Article 107 of the Act.

(3) Mechanism of users protection:

The purpose of the amendment is to take countermeasures for the risks generated from virtual currency exchange, such as pecuniary loss caused by insufficient information, the loss incurred in the custody of users’ property, and disclosure of personal information of users) ^[5]. Discussions are divided into 4 points.

① Information security management

A virtual currency exchange service provider must take necessary measures for information security management (Article 63-8 of the Act)

② Measures for users protection

A virtual currency exchange service provider must take relevant protective measures for users, including the provision of explanation for misunderstood transaction and information about contents of transaction (Article 63-10 of the Act)

③ Separate management of property

A virtual currency exchange service provider must manage its own property separately from the money or virtual currency of the users, and must retain a certified public accountant or an audit corporation to periodically conduct the external financial audit (Article 63-11 of the Act)

④ Designated Dispute Resolution Organization

Referring to financial ADR system, the complaint or dispute matter of users shall be concluded by the Designated Dispute Resolution Organization (Article 63-12 of the Act)

(4) Supervision over virtual currency exchange service providers:

As regulated by Articles 63-13 ~ 63-20 of the new Payment Services Act, essential contents of supervisory requirements for virtual currency exchange service providers are stated below:

① The obligation to prepare and maintain books and documents

② Annual financial reports

③ The authority of the Prime Minister to inspect relevant business

④ The Prime Minister orders a virtual exchange service provider to conduct business improvement.

- ⑤ The Prime Minister may revoke the registration of a virtual currency exchange service provider who has obtained the registration through illegal or wrongful means.

(5) Penalty for violation of obligations

The existing penalties under articles 107~109 and articles 112~117 of the Payment Services Act also apply to virtual currency exchange service providers. The causes of violation of obligations and corresponding penalties are summarized as follows:

- ① Any person who has not obtained registration or has obtained registration through wrongful means or by use of other's name is subject to imprisonment for not more than three years or a fine of not more than three million yen, or both (Article 107 of the Act)
- ② An exchange service provider who has violated the separate management of property or has violated the disposition of suspension of operation is subject to imprisonment for not more than two years or a fine of not more than three million yen, or both (Article 108 of the Act).
- ③ Any person who has failed to prepare or has falsely prepared books, reports, attachment and documents or has refused to answer the questions or has refused to accept or has hindered the business inspection is subject to imprisonment for not more than one years or a fine of not more than three million yen, or both (Article 109 of the Act)
- ④ A person who fails to take necessary measure for improving its operation is subject to a fine of not more than one million yen.

2. Act on Prevention of Transfer of Criminal Proceeds

In order to prevent from money-laundering, the legitimacy of fund sources must be assured. The amended "Act on Prevention of Transfer of Criminal Proceeds" (hereinafter referred to as the "Act") incorporates the virtual currency exchange service providers as "specified business operators" and imposes them with the following main obligations:

- (1) The obligation to confirm user identification (Article 4 of the Act)
- (2) The obligation to confirm and preserve transaction records (Articles 6 & 7 of the Act)
- (3) The obligation to report suspicious transactions (Article 11 of the Act)

The above are major contents of the amendments to legislations in relation to virtual currency exchange service providers in Japan. The purposes of the amendment are to promote the innovation of virtual currency operators and the balanced development with consumer protection. Therefore, they are included in the Payment Services Act and are subject to similar supervision as with electronic bill and Funds Transfer Service[6]. The reorganization of virtual currency system in Japan has stepped forward. However, the application of actual operation needs continual follow-up and observation, so as to be used as reference for the relevant law system of our country.

[1] Financial System Council, The Working Group on Payments and Transaction Banking of the Financial System Council, P27.

[2] Currency-Denominated Assets, Assets denominated in currency refers to the "Currency-Denominated Assets" in Japanese and defined in the Payment Services Act: as used in this Act means assets which are denominated in the Japanese currency or a foreign currency, or for which performance of obligations, refund, or anything equivalent thereto (hereinafter referred to as "performance of obligations, etc." in this paragraph) is supposed to be made in the Japanese currency or a foreign currency. In this case, assets for which performance of obligations, etc. is supposed to be made by means of Currency-Denominated Assets are deemed to be Currency-Denominated Assets.

[3] < Improvement System of Virtual Currency >, Daiwa Institute of Research, see website: http://www.dir.co.jp/research/report/law-research/financial/20160520_010904.pdf#search=%27%E4%BB%AE%E6%83%B3%E9%80%9A%E8%B2%A8+%E8%B3%87%E9%87%91%E (Last browse date: 12/07/2017)

[4] Article 63-2 of the Payment Service Act provides the registration with the Prime Minister; however, in practical operation, the operators shall apply for registration with the local financial bureau.

[5] Financial System Council, The Working Group on Payments and Transaction Banking of the Financial System Council, P29.

[6] In the Payment Services Act of Japan, it is specified that the remittance business engaged by a non-banking provider was officially named as "Funds Transfer Service", in which business contents aim at the third payment works. Financial Research Development Funds Management Committee, "Study of the industrial development and management between international non-financial institution payment services", written by Kuo Chen-Chung and Hsu Shih-Chin, pp60~61(2015).

Links

- [Improvement System of Virtual Currency](#)

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