Current Situation of Japanese VC Regulation

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Speaker's biography

Admitted to the bar in Japan (1999-) and in the State of New York (2005-)

Founder and representative lawyer of So Law Office (2015-)

Legal Advisor to Japan Blockchain Association (JBA) (2014-)

Specialized in Crypto-related law since 2013

I　Japanese Virtual Currency Act

The VC Act was enacted in April 2017 and is enforced in April 2017

Introducing "registration system"

16 companies have been registered including bitFlyer, Zaif, QUOINE, DMM, GMO, SBI
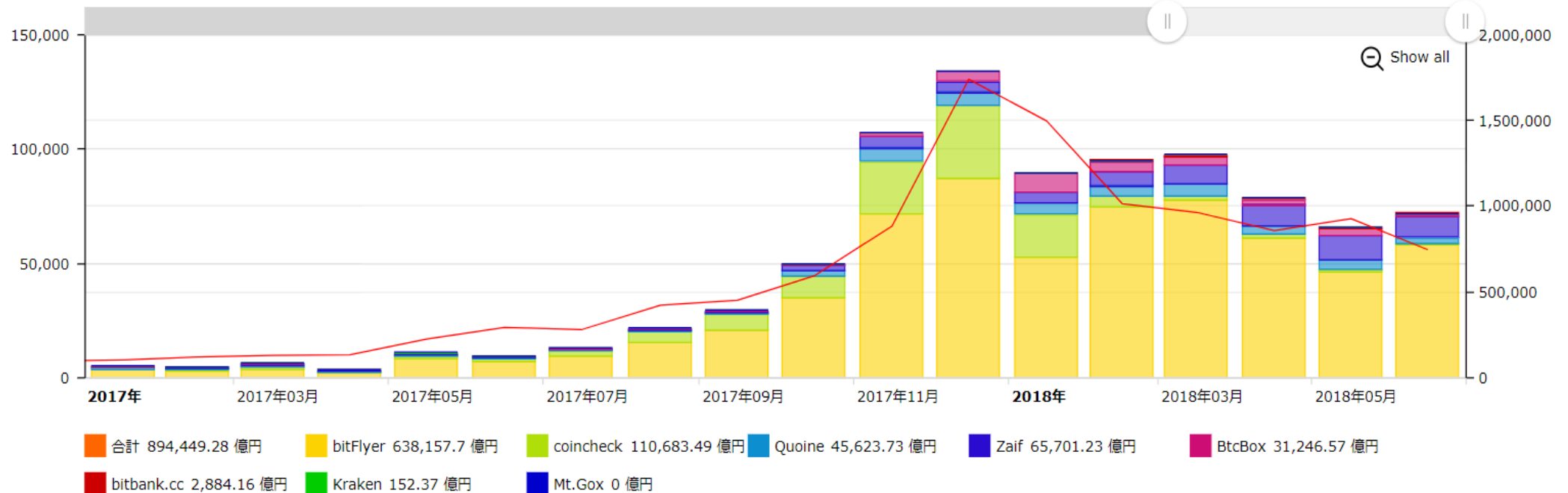
4 companies (including Coincheck) are operating under deemed registration (transitional measures)

More than 100 companies are applying

Trading Volume of Japanese Exchanges

国内取引所(JPY-BTC)の総月間出来高(日本円換算、単位:億円)

※差金決済/先物取引を含む

Legend:
- 合計 894,449.28 億円
- bitFlyer 638,157.7 億円
- coincheck 110,683.49 億円
- Quoine 45,623.73 億円
- Zaif 65,701.23 億円
- BtcBox 31,246.57 億円
- bitbank.cc 2,884.16 億円
- Kraken 152.37 億円
- Mt.Gox 0 億円

https://jpbitcoin.com/market/volume

Market Entrants from Overseas

There are many applicants from overseas

They are from all over the world including the US, Europe, Russia and former Soviet Union, and China

Reasons for entry to Japan Market

Stability of the law

Large trading volume

Bank accounts are relatively easier to open

However, it is in question if the said perceived advantages still remain

II   VC Exchange and Registration

VC exchanges are required to "register" with JFSA

Obligations: segregation of exchange's asset and clients assets, compliance, internal audit, accounting audit, audit on segregation, accountability to users, KYC/AML etc.

Definition of Type I Virtual Currency

Type I VC

(i) financial value,

(ii) recorded by way of electronic means,

(iii) which may be transferred via electronic data processing system,

(iv) which may be used to purchase goods or receive services from unspecified persons,

(iv) which may be purchased from and/or sold to the unspecified persons,

(iv) EXCLUDING any fiat currency (of Japan or otherwise) and assets denominated in any such fiat currency.

→   Payment Type Coin: BTC, BCH, Ether, etc.

Definition of Type II Virtual Currency

Type II VC

(i)   financial value,

(ii)   recorded by way of electronic means,

(iii)   which may be exchanged, as against unspecified person with any Type I VC

(iv)EXCLUDING any fiat currency (of Japan or otherwise) and assets denominated in any such fiat currency.

→ Almost all alt-coins and ICO tokens are deemed, at least, as Type II VC

→ Fiat denominated e-money such as Suica is not deemed as VC

→ Some "securities" might fall in the definition of VC.   In such case, both securities law and VC law apply to such security tokens.

Virtual Currency Act – Review becomes Stricter

Original intention at the time of legislation in 2016
→ Enabling the startups to engage in VC business

Review became stricter in mid 2017 because of surge in VC prices
- FSA's special monitoring team was formed
- Hundreds of questions are being asked when applying for registration

Virtual Currency Act – Review becomes Stricter

Review becomes far stricter after the Coincheck incidents

Security, Advertisement, Operation, Internal Management, Insider, Anti-money laundering, Market Maneuvering

The required level is higher than that of Self-regulation

There are no new exchanges admitted since last December

Ⅲ　Coincheck incident and afterwards

On January 26, 2017, NEM equivalent of approximately 58 billion yen was hacked from Coincheck

Coincheck has repaid all stolen loss to its users with JPY (1 NEM=88.5 yen, total 46 billion) from its own asset

Many were surprised to find the scale of profitability of exchanges

Coincheck incident and afterwards

The FSA's Examination after the Coincheck incident

- On 1st February, all registered exchanges and deemed registered exchanges were ordered to report on system risks
- On-site inspection is being conducted first on Coincheck, thereafter on each registered and deemed registered exchange
- Business improvement order, business suspension order, refusal of registration were issued to exchanges

Coincheck incident and afterwards

JFSA Workshop on Virtual Currency Exchange Business (April 2018 -)
- Research group of experts

Japan Virtual Currency Exchange Association (April 2018 -)
- Established as voluntary self-regulatory organization, but aiming to be legally-mandated SRO. 16 registered exchanges currently join. Scope of self-regulation is being discussed including, security, anti-money-laundering, market manipulation, etc.

Ⅳ   ICO Regulation

ICO is abbrevation of "Initial Coin Offering"

Fund-raising by selling so-called "coins" or "tokens"

Still remains global hot topics being followed with growing enthusiasm

ICO regulation

In December `17 JFSA revealed its view to relevant parties that ICO tokens constitute, to the extent they have the probability of being listed later, "virtual currency"

ICO regulation

"Registration of virtual currency exchange business" + "notification of coins" are required for ICO in Japan.

December `17 onwards no ICO was being launched as unequivocally in compliance of the laws.

ICO and Security Law

Some ICO tokens meet the definition of securities as well as the definition of VC

Definition of "Collective Investment Scheme" (CIS) – One of Type II Securities

(i) Raising "fiat" money,

(ii) investment to some business,

(iii) profit distribution to investors

ICO and Security Law

In principle, Type II financial instrument business license is necessary to sell CIS (either of a private sale, public sale, primary and secondary).

Both security regulation and VC regulation apply.

PTS (private trading system) license is necessary to operate an electronic order matching system for securities (including CIS). Tough burden.

Ⅴ　Future Japanese virtual currency exchange industry

The VC Act in Japan was perceived as advanced and forward-looking when published

A lot has happened in one year thus the act started to lag behind the fast-changing reality

Future Japanese virtual currency exchange industry

As drafted, the law was meant to promote innovation, but as currently operated it is to further regulate the industry

How will it be operated going forward?