

Blockchain Games Regulations and the Analysis Concerning Crypto Assets Laws, Gaming Law, and Act against Unjustifiable Premiums and Misleading Representations

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I. What is a Blockchain Game?

A blockchain game is a game that uses the blockchain and uses crypto assets, tokens or NFTs (Non-Fungible Tokens).

In a typical game the following occurs:

- (1) user purchases game assets that belongs to the game operator rather than the user,
- (2) such game assets cannot be freely transferred, sold, or lent out, and
- (3) even time-consuming data disappears after game distribution ends.

Whereas in blockchain games, it is said that the following occurs:

- (1) the user is the holder of the token (game asset),
- (2) the token can be transferred, sold, or lent out to third parties,
- (3) third parties can also use the token, and
- (4) as long as the blockchain exists¹, the recorded digital assets will exist in perpetuity.

II. Laws to Consider and Conclusions

When providing a blockchain game to Japanese residents, the laws listed below should be taken into account. Here is a summary of the laws that pertains to this matter:

(1) Fund Settlement Law and Security Act
To issue and sell NFT itself is not regulated in Japan. Exception to it is (i) if tokens are deemed as crypto assets, such as fungible token which might be used as a payment method, they might be regulated under the Fund Settlement Law and (ii) if tokens are deemed as security, such as tokens including dividend feature, they might be regulated by the Financial Instrument Exchange Act.
(2) Act against Unjustifiable Premiums and Misleading Representations (hereinafter refer to Premiums Law or Premium and Representation Law)
Blockchain Game players might be given tokens, digital currencies, NFTs, digital assets or other gifts which have financial value when a user register, login, play a blockchain game. These gifts might be considered “premiums” or “free gifts” under the Premiums Regulations of the Premiums Law and the value of them are limited.
If the Play to Earn games allow players to (a) purchase NFTs and (b) earn some reward (e.g., NFTs or tokens) by playing the game, the reward portion may be subject to the prize regulation.

¹However, if the content data associated with the token is stored on a server outside the blockchain, the content data on that server may disappear separately from the token.

There is an argument that depending on the game design, the reward may not be considered an extra (premium) and may not be subject to the Premiums Law.

III. Legal Considerations

The following is a discussion of each legal issue.

1. Crypto Asset Law and Security Act

(a) Where is the problem?

Under blockchain games, the game operator frequently sells game characters, items, weapons, and land etc. as NFTs to users in exchange for ETH or other crypto assets.

Japanese law does not regulate sales of pure NFT, but regulate sales of crypto assets and sales of securities. Thus, whether sold tokens are not deemed as crypto assets or securities are crucial issue.

(b) What are crypto assets?

Under the Fund Settlement Act, the seller, Crypto Asset is defined as follows:

Definition of Crypto Assets (Article 2 Section 5 of the Fund Settlement Act)
Definition of Type I Crypto Asset
A property value that is recorded in electronic record and transferred electrically, that can be used to pay for the purchase of goods or receive services to an unspecified person, and that can be purchased and sold to an unspecified person (excluding some stable coins and securities).
Definition of Type II Crypto Assets
Crypto Asset that is recorded in electronic record and transferred electrically which can be mutually exchanged with the Type I Crypto Asset with an unspecified party (excluding some stable coins and securities).

Selling or providing custody of crypto assets are highly regulated and must generally be handled by registered crypto asset exchange operator and also it is not feasible for a blockchain game operator to obtain registration.

At this moment, whether tokens are considered as crypto assets is determined by the number of issued tokens and whether the tokens can be used as some form of payment. NFTs are generally not considered as crypto assets, but if a game operator says it is an NFT, and the NFT has payment features etc., it may be considered a crypto asset.

(c) What are Securities?

Japanese Financial Instrument and Exchange Act (FIEA or Security Act) governs the issuance or sales of securities. Securities includes stocks, bonds, mutual funds, collective investment scheme etc. We have been often asked by blockchain game operators whether it is legal in Japan to sell NFTs, such as land, which generate “income” or “dividend”. If NFTs generate income without the participation of players, they may

be classified as securities. Thus, when selling profit-generating tokens, the game should consider including features of players' effort, such as editing land to attract customers.

2. Gambling offenses

(a) General Remarks

The crime of gambling under the Penal Code is established by (1) contesting the gain or loss of property profits by (2) winning or losing by chance.

In addition, not only money but also "property interest" is considered to be the object of gambling, and rice, land, and debt collection are all considered to be "property interest" subject to the crime of gambling. Crypto assets are also considered to fall under the category of property interest.

Article 185 (Gambling)
A person who engages in gambling shall be punished with a fine of not more than 500,000 yen or a fine. However, this shall not apply when the betting is limited to betting on objects provided for temporary entertainment.

(b) Gacha (Loot Box), Reveal and Gambling Law

Some blockchain games have features of Gacha (loot box) and reveal. Users pay money or crypto assets to a gaming company and get NFTs randomly. For example, users pay 1ETH to get a game character NFT. Game characters may include Julius Caesar, Guanyu, Genghis Khan, Napoleon, George Washington etc, and those characters have different strength, powers, rarity etc, and what users can get is not revealed to users.

It was believed that these sales might be considered as gambling because (i) users pay property value, (ii) users receive property value which differs by chance, and (iii) there is winning or losing (of property value) by chance.

However, in 2022, blockchain industries talked with a famous criminal law professor and some regulatory authorities and issued the guideline which states certain Gacha and reveal is not considered as gambling. Although the guidelines have no effect to police or criminal courts, the industry is now considering how following the guidelines may reduce the likelihood of criminal penalties.

The requirement is that the issuer and operator of games do not sell the same NFTs at different prices (for example, if the issuer sells NFTs that include Napoleon with 1ETH via Gacha, the issuer is not allowed to sell Napoleon NFT at a different price in another method), and do not buy back NFTs in a secondary market (for example, the issuer cannot buy back Napoleon NFT in 0.5ETH or 1.5ETH). In such cases, there is either winning or losing), and the issuer and operator shall not overstate the value of some NFTs in Gacha over other NFTs in Gacha.

(c) Synthesis

The same theory that applies to Gacha may apply to synthesis, but because synthesis is not discussed in the guidelines, we take a more cautious approach to synthesis.

3.Premiums and Premiums Law

(a)Initial Start

Developers often ask us of blockchain games if it is possible to give NFTs, game currency, crypto assets, other property to users free as a login bonuses, playing bonus and ranking bonuses etc. When conducting such distribution, it is necessary to consider the relationship with the Premiums and Representation Law.

(b) About the Premiums and Representation Law

The Premiums and Representation Law prohibits the offering of excessive premiums. Premiums are (1) offered as a means of inducing customers, (2) offered incidental to a transaction, and (3) economic benefits such as goods or money. As the definition of economic benefits is broad, crypto assets, NFTs, in-game currencies, and other benefits might be considered as economic benefits.

Excessiveness will vary depending on whether the sweepstakes is general sweepstakes, joint sweepstakes, or all-inclusive sweepstakes, Still, it will be based on the following criteria to the extent that it is considered relevant to the game.

	Description	Example	Limits on Premium and Prizes
Total Prizes	Offering prizes to anyone who uses the products or services or visits the store, not through sweepstakes.	Gifts for all purchases, gifts for all visitors, etc.	Transaction value less than 1,000 yen - Premiums up to 200 yen. Transaction value is over 1,000 yen - Premiums are capped at 2/10ths of the transaction value
General Sweepstakes	Offering prizes to users of goods or services by chance, such as lotteries, or by the superiority of specific actions.	In-store raffles, quiz and game competitions.	Transaction value less than 5,000 yen - 20 times the transaction value. Transaction value of more than 5,000 yen - 100,000 yen. (Both are capped at 2% of the total expected sales amount)

(c) Ranking Rewards and the Premiums and Representation Law

In traditional smart phone games, the top-ranking players frequently receive in-game currency. The economic value of in-game currency has been treated as zero or very low by game operating companies, and there is no issue under the Premiums and Representation Law.

In blockchain games, crypto assets and NFTs, which can be sold outside of the game might be given as prizes. In this case, the general sweepstakes restrictions apply. The transaction value determines the amount of the prize. Although it is difficult to determine how much the transaction value is, a reasonable approach would be to set the minimum charge as the transaction value and allow rewards of up to 20 times the minimum amount or 100,000 yen, whichever is lower.

(d) Play to Earn and the Premiums and Representation Law

If we consider a Play to Earn game as a game where players (a) purchase NFTs or game currency and (b) earn some reward (e.g., NFTs or game currency) by playing, the reward portion may be subject to the Premiums Regulation.

However, whether earned NFTs or game currencies will be considered "premium" is unknown. There is an argument that the Premiums Law does not apply to Play to Earn games because the rewards are not "extras (premiums)," but rather the purpose of purchasing NFTs and playing the game itself. Lottery winnings and game-play prizes, for example, are not considered "premiums," but rather "the purpose" of the transaction itself (gambling law shall be discussed lottery winnings and game-play prizes). This issue has not been resolved in Japan, and careful deliberation is required.

Reserved Matters

The contents of this document have not been verified by the relevant authorities and are merely a description of arguments considered reasonable under the law. It is only the current thinking of our firm, and our firm's thinking is subject to change.

This document does not recommend using blockchain games or purchasing NFTs.

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