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Crypto Payments and Japanese Law (2nd Edition)

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I. Introduction

As the price of cryptocurrencies rises, Bitcoin has established itself as "digital gold." Bitcoin and stablecoins are rapidly becoming popular for everyday payments, particularly in South America and Africa, where financial infrastructure is insufficient. For example, in El Salvador, Bitcoin has been adopted as legal tender and is also used for tax payments and person-to-person remittances. Even in the developed United States, an increasing number of companies are adopting crypto payments for online shopping and subscription services.

Meanwhile, in Japan, while Bic Camera's introduction of Bitcoin payments in 2017 made headlines, the spread of crypto payments since then appears to have been limited. The main reasons for this are that profits are finalized at the time of crypto payment, and individuals are subject to tax of up to 55%, as well as the hassle of recording small payments and filing tax returns. However, if stablecoins, which have fewer price fluctuations, become more widespread, crypto payments may also become more widespread in Japan.

*This article is a revised version of "Crypto Payments and Japanese Law," published by the author on January 30, 2025.

This article explains how crypto payments work and discusses legal issues surrounding their introduction in Japan.
While "crypto payments" in this article refers to a broad concept that includes crypto asset payments and stablecoin payments, the legal discussion will primarily focus on cryptoassets. Regulations regarding the trading and management of stablecoins are generally like those for cryptoassets, so please refer to them accordingly.

II. Examples of Crypto Payments Around the World

Examples of Crypto payments can be broadly divided into two categories. One is where Crypto is used for direct payments, and the other is where credit cards or debit cards are used. Below are some examples of these payments being made overseas.

(i) Examples of using crypto for direct payments

- **America**
  - Overstock.com: A major online retailer that accepts Bitcoin payments.
  - Whole Foods: Spedn digital wallet accepts Bitcoin and Ethereum payments.
  - Starbucks: Accepts payments using the Bakkt platform in select stores
- **El Salvador**
  - There are examples where Bitcoin is used as legal tender and is being used for tax payments and person-to-person remittances.
- **Singapore and South Korea**
  - In Singapore, fintech companies are promoting the adoption of crypto payments.
  - Payments are also active on Korean gaming platforms.
- **Switzerland**
  - In Lugano, Bitcoin can be used to pay taxes and city service fees, as well as at McDonald's and other locations.
- **Japan**
  - In 2017, Bic Camera became the first major Japanese retailer to accept Bitcoin payments. This caused a stir at the time and became a symbolic example of cryptocurrency payments in Japan.

(ii) Example of using a card for crypto payments

Credit card[1] /Debit card type

- NEXO Card: Can be switched between debit and credit cards. In the case of credit,

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[1] Cards (such as the BlockFi Rewards Visa Card, Gemini Credit Card, and Japan's bitFlyer Card) are excluded from the definition of "crypto payments" in this article because they are charged in fiat and rewarded in cryptoassets.

funds are loaned using the deposited cryptoassets as collateral. The funds are used to pay for the credit. In debit mode, crypt assets are sold immediately upon use.

- Slash Card（Japan: A card planned for issuance by Aiquitas, Orient Corporation (Orico) as BIN sponsor, and Slash as program manager. Users will be able to hold USDC in their wallets and use that amount as collateral for yen-denominated payments. This card is attracting attention as Japan's first "stablecoin-collateralized card."

Debit card type

- XAPO Card: A card issued by XAPO Bank, a cryptocurrency bank in Gibraltar. Debit cards backed by USD and Bitcoin.
- Binance Card: Automatically converts cryptoassets into local currency upon payment.
- Coinbase Card: Earn rewards using crypto.
- BitPay Card: Supports Bitcoin, Bitcoin Cash, and USD.

Prepaid card type

- Crypto.com Visa Card: A rechargeable card with varying rewards for staking.

III. Crypto Payments and Japanese Law

(i) Summary of the Law

	Cryptocurrency Law and Fund Settlement Law Cryptocurrency Regulations	Installment Payment Act , Money Lending Business Law, Regulations on Prepaid Payment Instruments	Foreign Exchange Act
Accepting Crypto payments at company stores	none	none	Foreign Exchange Act reporting is required for transactions of 30 million yen or more with non-residents or overseas entities.
Crypto payments using payment processors	Possibility of applying trading regulations to payment processing companies	none	Same as above
Credit card type	Applicability of storage and trading regulations	Applicability of the Installment Payment Act (Shopping) and the Money Lending Business Act (Cashing)	Same as above
Debit card type	Applicability of storage and trading regulations	none	Same as above
Prepaid card type	none	Application of prepaid payment instrument regulations as a self-operated or third-party type	Same as above

(ii) Crypto Payments at Company Stores

This article explains the regulations for accepting cryptocurrency payments at your physical or online store.

In Japan, the buying and selling of cryptocurrencies, as well as their intermediation and management for others, are regulated as cryptocurrency exchange businesses. However, there are no regulations regarding accepting cryptocurrency payments at your store. There are also no regulations regarding holding received cryptocurrency in-house or exchanging it for cash using a cryptocurrency exchange.

However, in principle, any settlement of 30 million yen or more between non-residents or overseas accounts will trigger a reporting obligation under the Foreign Exchange and Foreign Trade Act (Article 55 of the Foreign Exchange and Foreign Trade Act). This reporting obligation also applies to settlements of 30-million-yen worth of cryptocurrency, and reporting by residents is required. This reporting obligation also applies to settlements described in section 3 and thereafter.

(iii) Crypto payments using payment processors

Some Japanese companies are reluctant to own or manage cryptoassets in-house. This is due to a number of factors, including price fluctuation risks, security risks such as hacking, and accounting and tax issues. Such companies sometimes use a third-party payment agent (hereinafter referred to as "payment agent") to receive cryptoassets, convert them to Japanese yen, and hand them over to stores and other companies.

This scheme is a combination of the following actions:
1) Receiving cryptocurrency for someone else.
2) Converting the received cryptocurrency into Japanese yen for someone else.
3) Handing over the converted Japanese yen to the company.

However, the act of "(2)-converting cryptoassets into Japanese yen" is considered to be a cryptoasset exchange business for payment agents, and in principle, it is thought that they will need to be registered as a crypto asset exchange business. In this regard, a comparison with the collection agency services provided by convenience stores and courier companies in Japan, which are carried out without any particular regulations, becomes problematic. Is it possible to consider that the activities performed by payment agents are also collection agencies and therefore should not be regulated, or is it possible to summarize them as follows?

1) The store grants the payment agent the authority to collect the cryptocurrency.
2) The payment agent receives the cryptocurrency as its own.
3) The payment agent hands over Japanese yen as part of the processing of the delegated business.
4) This is not a conversion act, but merely a payment method for processing the delegated business.

While this approach may be possible in theory, in my experience, it is likely that discussions with authorities will be tough in actual practice. Therefore, it is safe to assume that in practice, registration of a cryptocurrency exchange business will likely be required. However, if the business is conducted in conjunction with other business or delegated duties, it may be permitted depending on the specific content. This point requires careful consideration on a case-by-case basis.

(iv) Credit card type

(A) Mechanism

A typical example of a credit card-type crypto payment would look something like this:[2]

1) A cryptocurrency exchange or its affiliated company issues a credit card.
2) The user purchases goods in yen or dollars.
3) Unlike a regular credit card, payment is made in the form of Bitcoin or other currency deducted from the user's cryptocurrency exchange account.

(B) Installment Sales Act

In Japan, when issuing a credit card that includes features such as "installment payments over two months," "revolving payments," or "bonus lump-sum payments," this constitutes "credit purchase intermediation" and requires registration as a credit purchase intermediary under the Installment Sales Act (Article 31). Once registered, various regulations under the Act apply, including the obligation to provide information to customers, the obligation to prevent excessive credit, and restrictions on the severance of defenses.

On the other hand, cards that only allow payment methods of "one-time payments within two months (so-called monthly clear)" do not constitute credit purchase intermediation and do not require registration as a credit purchase intermediary. However, since this type of card falls under "two-month installment purchase intermediation" (Article 35-16, Paragraph 2 of the Installment Sales Act), it is subject to the obligation to implement appropriate management measures for card numbers, etc. (Article 35-16, Paragraph 1).

The above regulations also apply to credit cards linked to cryptocurrencies, depending on the features provided.

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[2] The NEXO Card described in II.2 lends money using deposited cryptoassets as collateral in credit mode, and uses those funds for settlement, so it is expected to be subject to the Money Lending Business Act in Japan. However, within the scope of our research, we have not found any cryptocurrency settlement credit cards that directly debit cryptoassets.

(C) Money Lending Business Act

The cash advance function of a credit card is a borrowing rather than a purchase of goods or services, so it is subject to regulation under the Money Lending Business Act, not the Installment Sales Act.
Even if the credit card is linked to cryptoassets, if cash advances can be made in yen or foreign currency, money lending applies. However, if cryptocurrency can be used for cash advances, it is not subject to regulation as the Money Lending Business Act does not apply to cryptocurrency lending in principle (see definition in Article 2 of the Money Lending Business Act).

(D) Cryptocurrency Act

(i) Regulations on Custody Activities

In the case of credit cards linked to cryptocurrencies, if the issuer directly stores users' cryptocurrencies, they are subject to regulation as a custodian under the Payment Services Act (Article 2, Paragraph 7).

However, the following cases may not constitute custody and may be exempt from regulation:

- Use of smart contracts or multi-sig structures that prevent a specific business from solely managing the private key
- Holding cryptocurrencies as collateral for the purpose of securing repayment of card charges, and therefore not considered "managing for another person"

(ii) Regulations on Trading Activities

Converting cryptocurrencies into fiat currency during card payments constitutes the sale of cryptocurrencies and generally requires registration as a cryptocurrency exchange business. Typical examples are:

(a) A user purchases a product with a credit card.

(b) A user sells cryptocurrencies equivalent to the purchase price from their account, and the proceeds (e.g., yen) are paid to the card issuer. These cases constitute the sale of cryptocurrencies (or their intermediation).

<u>Cryptocurrency Payment Schemes</u>

On the other hand, if a card issuer typically bills in yen and allows users to choose to "deposit cryptocurrency in lieu of yen" by the due date, this can be considered a type of payment method designation and, in some cases, may be considered merely a substitute payment, not a sale. In this case, registration as a cryptocurrency exchange business is not required.

However, the Installment Sales Act imposes restrictions on the display of payment methods and calculation methods, and how to address these restrictions presents a challenge. Furthermore, there are likely many practical challenges, such as accounting and tax procedures when card issuers accept cryptocurrency, and how to handle cases where cryptocurrency prices fluctuate in the event of a chargeback.

As a supplement to the Act on Prevention of Transfer of Criminal Proceeds, comprehensive credit purchasing intermediaries, credit card number handling contract operators, cryptocurrency exchange operators, banks, and money transfer operators are considered specified businesses under the Act on Prevention of Transfer of Criminal Proceeds and are subject to AML/CFT regulations, including KYC requirements. In addition, acquirers (contractors that enter into contracts with credit card numbers, etc.) are required to investigate affiliated stores, which serves as an anti-money laundering measure.

(v) Debit card type

(A) Mechanism

A typical example of a debit card-type crypto payment works as follows:

1) A cryptocurrency exchange or its affiliated company issues a debit card.

2) The user deposits Bitcoin or other cryptocurrency with the cryptocurrency exchange.

3) The user can purchase goods in yen or dollars within the amount of the deposited cryptocurrency.

4) When purchasing goods, Bitcoin is automatically converted into yen.

(B) Regulations on debit card issuance

In Japan, debit cards are not subject to the Installment Sales Act because they are instant payments. However, if a system is established in which users deposit funds and use them for card payments, a banking license or registered funds transfer business is required to accept that money. Because funds are transferred at the user's instruction, they have the characteristics of a foreign exchange transaction, and from this perspective, a banking license or registered funds transfer business is also required.

On the other hand, the Banking Act does not apply to the issuance of debit cards linked to cryptocurrencies, which may raise the following issues:

(C) Cryptocurrency Act

While the Banking Act does not apply to debit cards linked to cryptocurrencies, the following issues arise:

- Managing other people's cryptocurrencies as a business requires registration as a cryptocurrency exchange business.

- Selling cryptocurrencies at the time of payment and using the proceeds to pay constitutes the sale of cryptocurrencies and requires registration as an exchange business.

- If the card company bills in yen and the user deposits cryptocurrencies as a substitute payment, it does not constitute an exchange business.

(vi) Prepaid card type

(A) Mechanism

A prepaid payment instrument is a system where you pay in advance, such as a book voucher, Apple gift card, or Amazon gift card, and are given a balance according to that amount, which can then be used to make payments.

The process for prepaid crypto payments is as follows:

1) The issuing company issues a prepaid card.
2) The user sends Bitcoin etc. to the issuing company.
3) The Bitcoin sent is charged according to its current value. For example, 0.001 BTC is equivalent to 15,000 yen.
4) When the user uses the card, the amount is deducted from the charged balance.

(B) Restrictions on the issuance of prepaid payment instruments

Prepaid payment instruments issued in Japan are divided into "in-house" and "third-party" types.

- Self-owned: A payment instrument that is only for the issuing company's own products and services.
- Third-party: A payment method that also accepts products and services from other companies.

In the case of a self-owned type, notification is required, and in the case of a third-party type, registration is required, and in both cases, restrictions such as depositing half of the unused balance are imposed.

However, the regulations do not apply in the following cases:

- Regardless of whether it is a self-insured or third-party type, if the validity period is set to less than six months
- For self-owned loans, if the total unused balance at the end of March and September is 10 million yen or less

(C) Application of Cryptocurrency Act

Unlike credit cards and debit cards, prepaid cards are generally not subject to regulations governing cryptocurrency exchange businesses. The reasons for this are as follows:

1) The issuing company does not store cryptocurrency.
2) When a card is charged, a charge is made according to the amount of cryptocurrency, but this is not an exchange of money for cryptocurrency. It is merely the act of issuing a prepaid payment instrument.
3) It does not constitute an exchange between cryptocurrencies.

However, if the scheme allows the charged cryptocurrency to be converted back into cryptocurrency (refund), it will essentially be considered a deposit of cryptocurrency, and custody regulations for cryptocurrency exchange businesses may apply.

IV. Non-Legal Issues

(i) Crypto Payments and Taxation

(A) Profit determination when settling cryptocurrencies

With cryptocurrency payments, profits are considered confirmed at the time of settlement, and tax is levied on these profits. For example, if you acquire cryptocurrency for 10,000 yen and it increases in value to 50,000 yen, and you use that cryptocurrency to make a settlement, you will have a profit of 40,000 yen. For individuals, this profit is classified as "miscellaneous income" and is subject to comprehensive taxation, with a maximum tax rate of 55% being applied when combined with other income.

(B) The hassle of recording small payments and filing tax returns

Crypto payments are subject to tax as described above, and as a general rule, require filing a tax return. Those with miscellaneous income of ¥200,000 or less who are salaried workers without a single source of income are not required to file a tax return.
However, those with miscellaneous income exceeding ¥200,000, or those with miscellaneous income of ¥200,000 or less who are self-employed, freelance, or have a side job and are required to file a tax return, must also report their crypto payment profits down to the last yen. For example, if you use cryptocurrencies for everyday purchases, you are required to record the market value of your cryptocurrencies at the time of each transaction and add up the profits to report. This recording and calculation process is extremely cumbersome, and can be a significant practical burden, especially when making frequent small payments.

This issue also applies if you later use leftover foreign currency from an overseas trip. For example, if you acquire $10 when the exchange rate is 120 yen to the dollar and then spend it on a trip abroad a few years later when the exchange rate is 150 yen to the dollar, the difference (30 yen x 10 dollars = 300 yen) will be taxed as miscellaneous income, and you may be required to file a tax return.

(C) Taxation of Crypto Payments Overseas

Some countries do not impose capital gains taxes on cryptoassets. Others exempt certain transactions from taxation, such as those involving small amounts or long-term holdings.

(Tax systems by country = researched via Chat GPT, etc.)

1	Countries with no capital gains tax on individual cryptocurrency transactions	Singapore, Portugal, Switzerland, Malaysia, UAE, El Salvador
2	Countries that do not tax capital gains on long-term holding by individual	Germany (tax exempt if held for more than one year)
3	Countries with no capital gains tax within certain limits	UK (up to 6,000 GBP per year = approximately 1.2 million JPY), Italy (up to 2,000 EUR per year = approximately 320,000 JPY), South Korea (up to 25 million KRW per year = approximately 2.5 million JPY), Brazil (up to 35,000 BRL per month = approximately 900,000 JPY)
4	Countries that do not tax small payments	Australia (tax exempt if a single transaction is deemed to be a "Personal Use Asset" of 10,000 Australian dollars (approximately 900,000 yen) or less)
5	Countries currently discussing tax exemptions for small payments	United States (Currently, taxes are levied separately for short-term holdings and long-term holdings of over one year. Discussions are underway to exempt small profit settlements up to $200 per transaction from taxation.)
6	Countries where even small payments are generally taxed	Japan (however, miscellaneous income up to 200,000 yen is exempt from tax for those who are not required to file a tax return), France, Canada, Argentina

Discussions on exempting capital gains from taxation on cryptoassets in Japan are likely to be extremely difficult. Furthermore, within the G7, it may be challenging for Japan to persuasively request authorities to exempt small-value payments from taxation, given that the US, France, and Canada currently impose taxes.

However, as countries advance Web3 development, particularly if the US succeeds in exempting small-value payments from taxation, Japan may need to introduce a system that does not tax profits from small-value payments for competitive policy reasons.

(ii) Card Issuance and Connection with International Brands

When issuing cryptocurrency-linked cards, they often enter into a contract with an international brand (such as VISA, MasterCard, Amex, JCB, or Diners) and use their payment network. Since international brands are required to comply with regulations in their respective countries, they typically conduct the following types of screening with the card issuer:

- KYC (Know Your Customer) and AML (Anti-Money Laundering) measures: The issuer's financial status, business history, and compliance framework are reviewed.
- Fraud prevention and security measures: Standards regarding the traceability of cryptocurrency transactions and transaction security are verified.
- Chargeback handling: From a consumer protection perspective, establishing a system capable of handling chargebacks is required.

Additionally, instead of contracting directly with international brands, cards can be issued as co-branded cards through Japanese credit card companies that already have strong relationships with these brands. While this approach may simplify parts of the card issuance process, it's important to note that certain regulatory compliance requirements and costs still apply.

V. Future Development Potential and Challenges

Crypto payments are not particularly popular in Japan. The biggest factors are thought to be taxation of up to 55% and the complicated process of recording and reporting small payments.

If stablecoins become more widespread, the risk of price fluctuations will be reduced and a certain degree of solution is expected, but the extent of their adoption is still unknown. Additionally, the development of systems such as user protection and AML compliance remains an issue.

Looking ahead, improvements in the tax treatment of crypto payments are anticipated, particularly from the perspective of international competition in the Web3 sector.

<u>Disclaimer:</u>

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