

## Key Legal Issues : Entering the Video Game Market in Japan

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### 1. Introduction

Japan has long been a powerhouse in the video game industry, and is home to many famous developers and publishers that continue to lead the global market. However, the regulatory environment in Japan is evolving rapidly, as a result of legislative developments and the actions of industry associations. This article highlights key legal considerations for foreign companies looking to enter the video game market in Japan.

### 2. Regulation on In-Game Currency


One of the most distinctive features of Japan's regulatory framework for the video game industry is its treatment of in-game currency under financial laws. Unlike many other countries, in Japan in-game currency often is subject to stringent financial regulations, particularly those in the Payment Services Act. This unique approach reflects Japan's broader commitments to consumer protection and prevention of fraudulent activities in the digital economy.

In-game currency in Japan typically falls within one of two distinct categories: (i) paid in-game currency (Paid IGC), which users purchase with real money, and (ii) free in-game currency (Free IGC), which users earn through gameplay. Paid IGC is classified as "virtual currency" and falls under the purview of the Payment Services Act. This classification brings with it a host of regulatory requirements, to which companies must adhere if they wish to operate in the Japanese market.

#### (1) Restrictions on Issuance by Foreign Entities

One of the key challenges for foreign video game companies entering the Japanese market is the strict regulations that govern issuance of Paid IGC. Foreign companies generally are prohibited from soliciting Japanese users for sales of Paid IGC unless the companies comply with specific legal requirements. This often necessitates either registering as a foreign entity in Japan or establishing a Japanese subsidiary to handle the issuance of in-game currency.

The requirement to establish a legal presence in Japan is not merely a formality; it represents a significant commitment in terms of time and resources. Foreign companies must navigate Japan's complex legal and regulatory environment, which often includes rigorous documentation, compliance checks, and ongoing reporting obligations. Since communications with regulatory authorities must be conducted in Japanese, many foreign publishers seek the support of local legal advisors or consultants well-versed in Japanese law. These advisors play a crucial role in ensuring that foreign companies navigate the regulatory landscape effectively and avoid potential legal pitfalls.



The Japanese government's focus on consumer protection means that compliance is closely monitored, and noncompliance can carry severe penalties. This includes not only monetary fines but also potential suspension of operations in the Japanese market. For these reasons, foreign companies must approach the issuance of Paid IGC with a thorough understanding of the legal requirements and a commitment to ongoing compliance.

## **(2) Obligation to Secure Assets**

Another significant regulatory requirement for companies operating in Japan's video game market is the obligation to secure assets corresponding to the balance of unused in-game currency held by users. This requirement is designed to protect consumers by ensuring that they can receive refunds for any unused Paid IGC in the event of service termination.

Companies are required to make deposits with the Japanese government based on the balance of unused in-game currency. These deposits typically are calculated on a biannual basis, with the requirement being triggered if the unused balance exceeds JPY 10 million (approximately USD \$67,000). The deposit amount is intended to cover potential refund obligations a company might face if it ceases operations or if users demand refunds for unused in-game currency.

This regulatory obligation underscores the Japanese government's commitment to consumer protection, particularly in the digital economy. By requiring companies to secure assets at a level corresponding to their potential refund obligations, the government aims to prevent scenarios in which users are left out of pocket due to the sudden closure or termination of a game or service. This requirement also acts as a safeguard against fraudulent practices, ensuring that companies cannot simply disappear with users' money without fulfilling their refund obligations.


This obligation can represent a significant financial burden for foreign companies, particularly those that operate on a large scale with substantial amounts of unused in-game currency. Companies must factor this into their financial plans, and ensure they have sufficient liquidity to meet the deposit obligations. Failure to comply with this requirement can result in penalties, including fines and potential suspensions of operations in Japan.

## **(3) Distinction Between Paid and Free Currency**

A critical aspect of Japan's regulation of in-game currency is the requirement for companies to maintain a clear distinction between Paid IGC and Free IGC. This distinction must be reflected both in the company's internal records and in the way the currency is presented to users. The rationale behind this requirement is to ensure transparency and prevent any confusion or misrepresentations regarding the nature of in-game currency.

Companies are required to maintain separate records for Paid IGC and Free IGC on their servers, ensuring that the two types of currency are not intermingled. This distinction also must be communicated clearly to users, typically through the user interface of the game or service. Users must be able to easily identify which currency they have earned through gameplay and which they have purchased with real money.

Failure to maintain this distinction can have significant financial implications. If a company fails to distinguish between Paid IGC and Free IGC properly, the Free IGC may be treated as Paid IGC for regulatory purposes. This could result in the company being required to make additional deposits with the Japanese government, as



the unused balance of in-game currency would be inflated by the addition of the Free IGC. Moreover, in the event of service termination, the company might be required to refund Free IGC as if it were Paid IGC, leading to substantial financial losses.

The requirement to distinguish between Paid IGC and Free IGC also has implications for the design and operation of in-game economies. Companies must ensure that their systems are capable of accurately tracking and reporting different types of currency, and must implement measures to prevent any potential confusion or misrepresentations. This often involves significant investments in back-end infrastructure and user interface design, as well as ongoing monitoring and auditing to ensure compliance.

#### **(4) Refund Obligations**

Refund obligations are another key aspect of Japan's regulation of in-game currency. Companies are required to refund Paid IGC to users upon service termination. This requirement is designed to protect consumers by ensuring that they do not lose the value of purchased currency if a game or service ceases operations.

The refund obligation is particularly important in the context of Japan's broader consumer protection laws, which are among the most stringent in the world. Companies must be prepared to issue refunds in a timely and transparent manner, and must ensure that users are fully informed of their refund rights. This often involves providing clear and accessible information through the game's user interface, as well as maintaining records of all transactions involving Paid IGC.

As mentioned above, if a company fails to distinguish between Paid IGC and Free IGC, it may be required to refund Free IGC as well as Paid IGC. This could result in substantial financial losses, particularly if the game or service has a large user base with significant amounts of Free IGC. Therefore, Companies must take care to implement robust systems and processes to ensure that Paid IGC and Free IGC are distinguished clearly and that refund obligations are managed properly.

### **3. Regulation on Loot Boxes and Gambling**

The regulation of loot boxes and gambling in Japan is another area in which the country's video game laws differ notably from those of other jurisdictions. Japan's approach to loot boxes, known locally as "gacha," is relatively lenient compared with other countries. However, this leniency is balanced by strict regulations governing the design and operation of loot box mechanisms.

#### **(1) Legal Regulation of Loot Boxes**

Japan's regulation of loot boxes is rooted in the country's broader consumer protection framework, particularly the Act against Unjustifiable Premiums and Misleading Representations. This law is designed to prevent businesses from engaging in deceptive or unfair practices, and applies to a wide range of industries, including video games.

In the context of loot boxes, the law prohibits certain practices that are deemed to be exploitative or misleading. For example, it prohibits "complete gacha" models, in which obtaining a set of items through random draws yields yet another item. This prohibition reflects concerns that these models can encourage excessive spending

and exploit users' psychological tendencies.

While Japan's regulation of loot boxes is less restrictive than similar regulations in some other countries, it is important for companies to understand the specific legal requirements and limitations. Failure to comply with these regulations may result in significant penalties, including fines and legal action. Companies must take care to design loot box mechanisms in a manner that complies with Japanese law, and should consider consulting with legal experts who are familiar with the nuances of loot box regulations in Japan.

## **(2) Gambling Concerns**

Gambling is regulated strictly in Japan, and certain random reward systems in games may be considered gambling under Japanese law. The legal definition of gambling in Japan involves three key elements: (i) an outcome determined by chance, (ii) parties staking property, and (iii) the risk of losing that property.

Traditional loot boxes generally are considered compliant with Japanese gambling laws because they guarantee that users will receive an item of equivalent value to the money spent. However, the introduction of blockchain technology and non-fungible tokens (NFTs) into video games has created new challenges. If loot boxes are combined with blockchain technology in a way that allows items to be sold as NFTs, which can be transferred via external markets between users, the value of the items may fluctuate. If the value of the items falls below the amount spent, the loot box mechanism potentially could be classified as gambling, and thus illegal under Japanese law.


To address these challenges, industry associations in Japan, in collaboration with legal scholars, have developed the world's only legally compliant blockchain-based loot box models. As far as we know, Japan is the only country to have established such a framework, setting a unique standard to which other countries may look as they attempt to develop similar models in the future. This pioneering work places Japan at the forefront of the global video game industry in this highly specialized area.

## **4. Protection of Minors**

The protection of minors is another key area of concern for regulators in Japan. While discussions on protecting children's rights and data privacy in game design have advanced significantly in the AADC in the European Union, and the COPPA in the United States, Japan has yet to introduce specific, formal legal regulations in this area. However, industry associations in Japan have taken proactive steps to implement self-regulatory measures to protect minors.

These measures include limiting in-game spending based on age, issuing guidelines on responsible video gaming, and collaborating with educational institutions to address issues like video game addiction and the impact of video games on young players. The industry's self-regulation is largely driven by a desire to prevent government intervention, which could result in the imposition of more restrictive regulations.

One of the key challenges in this area is balancing the need to protect minors with the desire to allow them to enjoy video games in a safe and responsible manner. Companies must ensure that their games are designed in a manner appropriate for young players, and must implement measures to prevent minors from engaging in



excessive or harmful video game behavior. This often involves the use of parental controls, age verification systems, and spending limits, as well as ongoing monitoring and enforcement to ensure compliance with self-regulatory guidelines.

While Japan's approach to the protection of minors in video games is still evolving, proactive industry efforts and growing awareness of the importance of this issue suggest that further developments are likely in the coming years. Companies operating in Japan must stay informed about these developments and be prepared to adapt their practices to ensure that they provide a safe, responsible video game environment for all players, particularly minors.

## **5. Regulation of Game Events**

Japan has a long history with video game facilities, known as "game centers" or arcades, which were widespread even before the advent of home video game consoles. These venues, filled with game machines, have been an integral part of Japanese video game culture for many years. However, they also have been, and remain, a focal point of concern with regard to delinquency, which has led to strict regulatory oversight.

### **(1) Online Tournaments**

Except for general consumer protection laws, generally speaking, Japan has no specific regulatory requirements governing participation fees or prizes for online game tournaments. Companies can host online events at will, provided the companies and events comply with general consumer protection laws and adhere to the terms of service of the platform on which the event is hosted.

### **(2) In-Person Events at Physical Venues**

Hosting in-person video game events at physical venues in Japan involves a more complex regulatory landscape. If an event charges participants an entry fee and is held at a rented venue, the event may be classified as a "game center" under Japanese law. This classification requires event organizers to obtain a license from the local police department, pursuant to the game center regulations in the Amusement Business Law, which is aimed at preventing public disturbances and maintaining order.

The licensing process involves compliance with stringent requirements, including background checks on the organizers, inspection of the venue, and adherence to specific operating hours. Failure to obtain the necessary permits can result in the event being shut down, the assessment of fines, or other legal penalties.

### **(3) Restrictions on Prizes**

Another significant consideration is the restriction on offering prizes at game center events. If an event is classified as a game center operation, the offering of prizes generally is prohibited, regardless of the nature or value of the prize. This restriction is intended to prevent gambling and related activities and to ensure that game centers do not become venues for illegal betting or other unauthorized gambling activities.

Organizers must navigate these regulations carefully to avoid potential legal pitfalls. Some strategies include hosting events as free-to-enter, refraining from offering any form of prize, or partnering with venues that already

have the necessary licenses.

#### **(4) Impact on Esports**

These regulations initially posed a considerable challenge to the burgeoning esports industry in Japan. While the esports scene is rapidly growing, the strict rules around in-person events and prize offerings once were seen as significant barriers. However, thanks to the concerted efforts of Japanese legal experts and industry associations, substantial progress has been made in recent years.

These efforts have led to significant regulatory improvements, including the ability to host large-scale tournaments that charge entry fees. Industry stakeholders continue to work closely with authorities to adapt the regulations to accommodate and address the unique nature of esports, ensuring that the industry can thrive while remaining compliant with existing laws.

## **6. Game Streaming and the Use of Streamers**

In recent years, a growing trend in the promotion of new games has emerged, and emphasis is shifting from traditional event-based marketing to leveraging the influence of popular streamers. On an increasing basis, companies are opting to collaborate with well-known streamers to play and broadcast new games, to reach a broader audience through live streaming platforms. This approach not only builds anticipation and excitement for upcoming releases but also taps into the influencers' established fan bases, often resulting in immediate and impactful exposure.

### **(1) Legal Framework for Game Streaming in Japan**

In Japan, the legal landscape surrounding streaming is relatively permissive, provided that the game publisher has granted permission for the content to be streamed. Unlike some other jurisdictions, in which additional regulations might apply, Japan does not impose specific legal restrictions on game streaming. This allows for a vibrant, rapidly growing streaming community, in which both professional and amateur streamers can engage with video game content.

### **(2) Publisher-Imposed Streaming Guidelines**

Despite the lack of formal regulations, many game publishers in Japan have taken it upon themselves to establish comprehensive streaming guidelines. These guidelines are designed to protect the intellectual property of the publishers, ensure that the games are represented appropriately, and prevent unauthorized use of game content. Typically, these guidelines outline the conditions under which game content can be streamed, including restrictions on monetization, the use of copyrighted music, and the duration or scope of gameplay that can be broadcast.

The rise of these guidelines mirrors similar practices in other countries, where publishers have created user-generated content (UGC) policies to manage how their games are portrayed and shared online. This practice has become particularly important as the lines between professional content creators and amateur streamers blur, with many individuals producing content that reaches large audiences.

### (3) Impact on Content Creators and Streamers

It is vital that content creators and streamers adhere to relevant guidelines, to avoid potential conflicts with publishers. Noncompliance can result in takedown notices, demonetization, or legal action. Therefore, streamers need to be aware of the specific requirements established by relevant publishers when planning content.

On the other hand, publishers who collaborate with streamers often benefit from the organic promotion that streaming provides. Streamers can offer real-time feedback, engage directly with their audiences, and create a sense of community around a game, which can boost the game's popularity significantly. This symbiotic relationship has led to the emergence of professional streamers who play a key role in the marketing strategies of game publishers.

### (4) Considerations for Foreign Companies

It is essential that foreign companies looking to enter the Japanese video game market understand and comply with these streaming guidelines. While the Japanese market may not have the same stringent legal regulations on streaming as other regions, respecting the publishers' guidelines is critical to maintaining a positive relationship with local stakeholders. Moreover, foreign companies should be particularly mindful of Japan's strong cultural emphasis on ethical behavior and social responsibility. In Japan, streamers often are expected to self-regulate their activities, and there is a strong tendency for streamers to suspend activities if they become involved in controversial behavior, such as discriminatory remarks or questionable past conduct. This cultural context means that foreign companies must be prepared for the possibility of sudden cancellations of or changes to planned streaming events.

To mitigate the risks associated with these disruptions, it is advisable for foreign companies to consider collaborating with Japanese agents. These agents can help navigate the local streaming landscape, provide insights into the suitability of potential streamers, and offer alternative solutions in the event of a last-minute cancellation. Having a contingency plan in place, such as securing backup streamers or alternative promotional strategies, can be crucial to maintaining the momentum of a marketing campaign in Japan.

Additionally, as the global popularity of Japanese games continues to rise, many foreign content creators seek to stream Japanese titles. These creators also must navigate and comply with the guidelines established by Japanese publishers, which may differ from the regulations in their home countries. Collaboration between foreign streamers and Japanese publishers can be mutually beneficial, provided that both parties have a clear understanding of expectations and relevant legal requirements. Ensuring that all potential cultural and ethical issues are addressed is key to a successful partnership.

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