高橋宏司「証券関係法規の規律管轄権とICO (Initial Coin Offering)」

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“Prescriptive Jurisdiction in Securities Regulations and ICOs (Initial Coin Offerings)”

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This article is written in Japanese. What follows is an abstract in English.

The ICO is a new method of fund raising using the blockchain technology. It enables tokens to be issued on a blockchain in return for the contribution of funds in either fiat or crypto currencies. It is in vogue in recent years but has generated concern over fraud in a large number of cases. This has kindled the interests of regulators around the globe, who have been watching the space closely. While some countries have introduced an outright ban on ICOs, others have begun to see certain types of ICO tokens as securities with a view to protecting the investors. There is, however, much uncertainty as to the geographical reach of securities regulations as applicable to ICOs. As it is a question of prescriptive jurisdiction, this article begins by examining in the context of securities regulations the various principles underpinning prescriptive jurisdiction, such as the protective principle, universality principle, personality principle and territoriality principle. Since the territoriality principle is the cornerstone of prescriptive jurisdiction in securities regulations, this article proceeds to examine the various tests for the operation of the territoriality principle, such as the conduct and effects test and the transactional test to see how well they suit the regulation of securities of the traditional type. This article concludes by considering whether those tests are also fit to be applied to ICOs. Throughout this article, an intense analysis is conducted on the way the internet has affected the prescriptive jurisdiction in securities regulations and how the blockchain technology may affect it in the future.