

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

# Banking Regulation 2024

---

Definitive global law guides offering  
comparative analysis from top-ranked  
lawyers

## **Japan: Trends & Developments**

Takaharu Totsuka, Keisuke Hatano  
and Tomoki Kashimura  
Anderson Mori & Tomotsune



## Trends and Developments

### Contributed by:

Takaharu Totsuka, Keisuke Hatano and Tomoki Kashimura  
**Anderson Mori & Tomotsune**

**Anderson Mori & Tomotsune** is a full-service law firm formed by the combination of three leading law firms in Japan: Anderson Mori (one of the largest international firms in Japan, which was best known for serving overseas companies doing business in Japan since the early 1950s), Tomotsune & Kimura (well known for its expertise in international finance transactions) and Bingham Sakai Mimura Aizawa (a premier international insolvency/restructuring and crisis management firm). It is proud of its long tradi-

tion of serving the international business community, and of its reputation as one of the largest full-service law firms in Japan. Its combined expertise enables the firm to deliver comprehensive advice on virtually all legal issues related to corporate transactions. The majority of its lawyers are bilingual and experienced in drafting and negotiating across borders and around the globe.

## Authors



**Takaharu Totsuka** is a partner at Anderson Mori & Tomotsune and has been involved in various types of financial transactions, including financial regulatory issues in relation to payment

services and e-commerce as well as banking and securities, securitisations of real properties and receivables, private finance initiatives, and syndicated loans to operating companies and investment corporations. He has been a member of the Financial Law Board since January 2017.



**Keisuke Hatano** is a partner at Anderson Mori & Tomotsune and specialises in payment and settlement-related regulations in Japan. He has also been involved in a number of

significant finance transactions and engaged in many international and domestic litigations. In addition to his professional experience at Anderson Mori & Tomotsune, he worked for the Financial Services Agency where he was mainly engaged in the several amendments to the Banking Act which aim to create a pro-FinTech environment.

Contributed by: Takaharu Totsuka, Keisuke Hatano and Tomoki Kashimura, **Anderson Mori & Tomotsune**



**Tomoki Kashimura** is an associate at Anderson Mori & Tomotsune. He has been involved principally in the fields of financial, corporate and commercial law, with an emphasis on domestic and cross-border financial regulatory issues since joining the firm in 2018.

---

## Anderson Mori & Tomotsune

Otemachi Park Building  
1-1-1 Otemachi  
Chiyoda-ku  
Tokyo 100-8136  
Japan

Tel: 81-3-6775-1109  
Fax: 81-3-6775-2109  
Email: [takaharu.totsuka@amt-law.com](mailto:takaharu.totsuka@amt-law.com)  
Web: [www.amt-law.com/en](http://www.amt-law.com/en)

**ANDERSON  
MŌRI &  
TOMOTSUNE**

## Legal Framework for Stablecoins (Enforcement of Amended Payment Services Act and Cabinet Office Ordinance on Electronic Payment Instruments Exchange Service Providers)

### Overview

On June 1 2023, the amended Payment Services Act (the “PSA” or “amended PSA”) went into effect along with the Cabinet Office Ordinance on Electronic Payment Instruments Exchange Service Providers (the “COO on EPIESPs”), and regulation of stablecoins in Japan began in earnest. Based on the contents of the COO on EPIESPs and the Administrative Guideline (Third Volume: Financial Institutions, 17 Guideline for Supervision of Electronic Payment Instruments Exchange Service Providers) (“Guideline for EPIESPs”) provided by the Financial Services Agency (the “FSA”), this article will provide an overview of the stablecoin regulations, their impact on practice, and possible practical responses.

### Classification of Electronic Payment Instruments

The amended PSA provides a new definition of “Electronic Payment Instruments” as referring to digital money-type stablecoins – those issued at a price linked to the value of a legal currency (eg, one coin = JPY1) and promised to be redeemed in the same amount as its issue price.

Article 2, paragraph 5 of the PSA:

- (a) property value (limited to currency-denominated assets which are recorded on an electronic device or any other object by electronic means, and excluding securities, electronically recorded monetary claims specified in Article 2, paragraph 1 of the Electronically Recorded Monetary Claims Act, prepaid payment instruments

and other instruments specified in cabinet office ordinances as being equivalent to the foregoing items [Requirement 3-1] (except those specified in the cabinet office ordinances taking into account their transferability and other factors [Requirement 3-2]) which can be used in relation to unspecified persons for the purpose of paying consideration [Requirement 1] for the purchase or leasing of goods or the receipt of provision of services, and can also be purchased from and sold to unspecified persons acting as counterparties [Requirement 2], and which can be transferred by means of an electronic data processing system (except those that fall under item (iii));

- (b) property value which can be mutually exchanged with those set forth in the preceding item with unspecified persons acting as counterparties, and which can be transferred by means of an electronic data processing system (except those that fall under the next item);
- (c) specified trust beneficial interests; and
- (d) those specified by cabinet office ordinances as being equivalent to those listed in the preceding three items.

### Electronic Payment Instrument I

Electronic Payment Instruments defined in item (i) (“Electronic Payment Instrument I”) are currency-denominated assets that can be used to pay consideration to unspecified people as well as purchased or sold to unspecified persons.

The applicability of Requirement 1 above is determined by factors such as whether the property value can be transferred among unspecified persons via a network like blockchain, whether payment by the property value is only acceptable at stores who have contracted with an

issuer, and whether the issuer oversees such stores (Guideline for EPIESPs I-1-1(i)). Most of the current payment instruments in Japan, such as electronic money, prepaid cards, and rewards programmes, do not fall under the category of Electronic Payment Instruments as they are issued without blockchain technology and the issuer centrally manages user balances and member stores.

With regard to Requirement 2, the Guideline for EPIESPs I-1-1(Note 1) states that digital money issued by banks or fund transfer service providers (“FTSPs”) does not meet this requirement if its issuer has taken technical measures to allow the digital money to be transferred only to persons who have passed a KYC check under the Act on Prevention of Transfer of Criminal Proceeds (the “APTCP”), and if the issuer’s consent or other involvement is required for each transfer of the digital money.

Electronic Payment Instrument I excludes “securities, electronically recorded monetary claims... prepaid payment instruments and other instruments specified in cabinet office ordinances as equivalent to the foregoing items” (Requirement 3-1), which is set forth in Article 2, paragraph 1 of the COO on EPIESPs.

#### *Article 2, paragraph 1 of the COO on EPIESPs*

The instruments specified in the cabinet office ordinance as being equivalent to securities specified in Article 2, paragraph 5, item (i) of the Act, electronically recorded monetary claims specified in Article 2, paragraph 1 of the Electronically Recorded Monetary Claims Act, or prepaid payment instruments specified in Article 3, paragraph 1 of the Act, shall be the property value that is issued without receiving consideration and that can be used by its presentation, delivery, notice, or other means for the purpose

of paying consideration for the purchase or leasing of goods or the receipt of provision of services from the issuer of the property value or a person designated by the issuer.

Pursuant to the provision above, “other instruments” (Requirement 3-1) may be interpreted to include currency-denominated points given as complimentary gifts or premiums when a consumer obtains products or services from a service provider. Consequently, even if they are issued as permissionless tokens, such points will be excluded from the definition of Electronic Payment Instruments.

Furthermore, Article 2, paragraph 5, item (i) of the PSA excludes “those specified in cabinet office ordinances taking into account their transferability and other factors” (Requirement 3-2) from “securities, electronically recorded monetary claims... prepaid payment instruments and other instruments specified in cabinet office ordinances as being equivalent to the foregoing items” (Requirement 3-1). Requirement 3-2 is outlined in Article 2, paragraph 2 of the COO on EPIESPs.

#### *Article 2, paragraph 2 of the COO on EPIESPs*

The instruments specified in the cabinet office ordinance taking into account their transferability and other factors as set forth in Article 2, paragraph 5, item (i) of the Act shall be prepaid payment instruments specified in Article 3, paragraph 1 of the Act (excluding Balance Transfer type Prepaid Payment Instruments as defined in Article 1, paragraph 3, item (iv) of Cabinet Office Ordinance on Prepaid Payment Instruments, Code Notifying Type Prepaid Payment Instruments as defined in item (v) of the said paragraph, and others that require consent or other involvement of the issuer of the prepaid payment

instrument on a case-by-case basis to complete the transfer).

While prepaid payment instruments are excluded from the definition of Electronic Payment Instruments under Article 2, paragraph 5, item (i) of the PSA, prepaid payment instruments traded and exchanged through a permissionless blockchain will fall under the category of Electronic Payment Instruments under Article 2, paragraph 2 of the COO on EPIESPs. In other words, prepaid payment instruments that do not require the issuer's consent or other involvement to complete the transfer (for example, prepaid payment instruments issued using such infrastructure as a blockchain with specifications that can be distributed to unspecified persons, and that can be used as a means of remittance and settlement to unspecified persons) will be classified as Electronic Payment Instruments (Guideline for EPIESPs I-1-1 (Note 2)). Moreover, a new obligation will be imposed on prepaid payment instrument issuers that requires such issuers to take proper measures not to issue a prepaid payment instrument that falls under the category of Electronic Payment Instruments (Article 23-3, item (iii) of Cabinet Office Ordinance on Prepaid Payment Instruments). As a result, the issuance of Electronic Payment Instruments (permissionless stablecoins) in the form of prepaid payment instruments is prohibited in principle.

### *Electronic Payment Instrument II*

Property value that can be exchanged with Electronic Payment Instrument I with unspecified counterparties falls under category of Electronic Payment Instruments specified in item (ii) even if such property value cannot be directly purchased from or sold to unspecified persons. This is determined by standards such as a blockchain-based structure, no issuer involvement, market availability, and economic func-

tions equivalent to Electronic Payment Instrument I. (Guideline for EPIESPs I-1-1(iii)).

### *Electronic Payment Instrument III*

A "specified trust beneficiary interest" set forth in Article 2, paragraph 5, item (iii) of the PSA ("Electronic Payment Instrument III") falls under the category of Electronic Payment Instruments. This right is electronically recorded and transferred, and the trustee shall manage the entire amount of money by bank deposits (Article 2, paragraph 9 of the PSA). If a specified trust beneficiary interest is issued in Japanese Yen, all trust property shall be managed by Yen-denominated bank deposits, for which depositors may request withdrawal at any time (Article 3 of the COO on EPIESPs).

### *Electronic Payment Instrument IV*

Property value with a structure that allows transfer through a network, like blockchain, and does not fall within the definition of Electronic Payment Instrument I, II or III falls under Electronic Payment Instrument IV only if so designated by the FSA. However, no property value is designated to fall under Electronic Payment Instrument IV at this time (ie, as of October 2023). Any digital asset that meets the definition of crypto-assets under the PSA may be designated by the FSA and considered an Electronic Payment Instrument IV if it becomes widely adopted and used as a means of settlement in the future in Japan.

## **Regulations Imposed on Issuers of Electronic Payment Instruments**

### *Banks*

Where Electronic Payment Instruments are issued by banks, except in the case of a trust bank issuing tokens as a specified trust beneficiary interest, it seems natural to understand that the rights linked to the tokens are deposit claims against the bank, assuming that the user has

the right to request redemption thereof. However, transferring Electronic Payment Instruments to unhosted wallets makes it difficult for banks to have timely information about depositors. Such a situation is unforeseen under the existing deposit insurance system, which demands timely collection and transmission of all customer information in the case of a bank failure. Consequently, unless this challenge is resolved on a practical or legislative level, it will be virtually impossible for banks to issue Electronic Payment Instruments (tokenised deposits) related to deposit claims.

### *Fund transfer service providers*

Though applicable laws and regulations do not explicitly prohibit a type I FTSP (ie, a type of FTSP that can transfer funds of over JPY1 million) from conducting funds transfer transactions as an issuer of Electronic Payment Instruments, they are subject to strict regulations on the retention of funds (Article 51-2 of the PSA). Accordingly, they are virtually unable to be an issuer of Electronic Payment Instruments because the regulations on the retention of funds conflict with the scheme of the PSA.

Type II FTSPs (ie, a type of FTSP that can transfer funds of JPY1 million or less) may conduct funds transfer transactions as an issuer of Electronic Payment Instruments; however, such type II FTSPs must establish a system to confirm with each of the users whether the users' Electronic Payment Instruments are intended for funds transfer transactions when the balance of Electronic Payment Instruments held by the users exceeds JPY1 million (Article 51 of the PSA, Article 30-2, paragraph 2 of the Cabinet Office Ordinance on Fund Transfer Service Providers). However, they are only required to manage each user's balance in wallets managed by Electronic Payment Instruments Exchange Service Pro-

viders ("EPIESPs") defined in Article 62-3 and Article 2, paragraph 10 of the PSA and they are not required to take into account the balance in unhosted wallets in the calculation of JPY1 million.

In addition, a type II FTSP issuing Electronic Payment Instruments must adhere to regulations on the maximum remittance amount of JPY1 million per transaction when an EPIESP transfers Electronic Payment Instruments. This includes establishing a system to prevent transfers exceeding JPY1 million when transferred upon the user's instructions, and following the same guidelines when introducing new Electronic Payment Instruments to the user's unhosted wallet (Guideline for Fund Transfer Service Providers ("Guideline for FTSP") IV-2).

Furthermore, they must explain the details of Electronic Payment Instruments and take measures to prevent interference with user protection or the proper and reliable execution of fund transfer services. The Guideline for FTSP II-2-2-1-1(ix) outlines specific measures to be taken, including clarifying the timing and procedures for transferring rights to Electronic Payment Instruments, establishing a system for AML/CFT, ensuring the ability to cancel or nullify transactions related to the exchange service in the event of a failure or technological problems of the fund transfer service provided by itself or EPIESPs, and establishing a contact desk and internal rules for redemption procedures.

### *Specified trust companies*

Trust companies and foreign trust companies registered in Japan are permitted to issue Electronic Payment Instrument III as a "specified trust company" (Article 2, paragraph 27 of the PSA, Article 2-2 of the Order for Enforcement of the Payment Services Act ("OE of PSA")).

When a specified trust company issues Electronic Payment Instrument III as a business, the specified trust company is subject to the same regulations as type II FTSPs regarding the maximum remittance amount of a JPY1 million equivalent (Guideline for FTSP VI-1). Nonetheless, subject to additional approval, a specified trust company is permitted to issue an Electronic Payment Instrument III, which can be transmitted in excess of JPY1 million per transaction. To obtain the approval, a specified trust company must develop a business operation plan (including the maximum amount of the fund to be transferred) (Article 37-2, paragraph 2 and Article 40-2, paragraph 1 of the PSA, Article 12-4 of the OE of PSA). In this case, the specified trust company must also establish a sufficient system based on the risks associated with the issuance of an Electronic Payment Instrument III, which allows for large-amount fund transfer transactions, similar to those required for type I FTSPs (Guideline for FTSP VI-1). It should be noted that specified trust companies are not subject to the regulations on the retention of funds imposed on FTSPs.

## **Regulations Imposed on Electronic Payment Instruments Exchange Service Providers**

This section focuses on the significant and notable regulations imposed on EPIESPs in connection with the (i) sale, purchase and exchange, (ii) serving as an intermediary, brokerage or agency for the sale, purchase and exchange, and (iii) management of Electronic Payment Instruments.

### *Measures with respect to user protection*

EPIESPs are required to provide explanations to prevent users from mistaking them for stablecoin issuers, provide information on fees and contract terms, and take measures for user protection (Article 62-12 of the PSA). The Guideline for EPIESPs I-1-2-3(1) outlines criteria for judg-

ing the appropriateness of listed Electronic Payment Instruments which EPIESPs can list. These include clarifying the timing of and procedures for the transfer of rights, establishing a system for AML/CFT, protecting users' rights by allowing termination or cancellation of transactions, and promptly redeeming Electronic Payment Instruments in response to user requests.

### *Prohibition on receipt of deposit of money or other valuables from users*

EPIESPs are not permitted to receive deposit money or other valuables from users of their Electronic Payment Instruments Exchange Service (Article 62-13 of the PSA). However, this prohibition does not apply when an EPIESP receives deposits of money, etc from users in connection with its exchange, etc of Electronic Payment Instruments (meaning the acts listed in items (i) and (ii) of paragraph 10, Article 2 of the PSA) and the funds, etc are then entrusted to a trust company or a bank authorised to conduct a trust business and managed separately from the EPIESP's own property (Article 33, paragraph 1, item (i) of the COO on EPIESPs). This enables business models similar to those used by crypto-asset exchange service providers, in which an EPIESP takes deposits from users and then uses the money to purchase stablecoins (Electronic Payment Instruments) on the condition that the money is held in trust.

### *Obligation to separately manage users' Electronic Payment Instruments*

EPIESPs must manage users' Electronic Payment Instruments separately from their own Electronic Payment Instruments (Article 62-14 of the PSA). In general, users' separately managed Electronic Payment Instruments ("Deposited Instruments") need to be entrusted to a trust company. (Article 38, paragraph 1 of the COO on EPIESPs).



However, in exceptional cases, subject to approval from the authorities, Deposited Instruments may be managed by declaring their own trust and placing them in a cold wallet (Article 38, paragraphs 3 and 4 of the COO on EPIESPs). In practice, this strategy would be a more realistic choice for managing Deposited Instruments separately. To obtain approval, certain conditions must be met. These include having a stated capital and net assets of at least JPY30 million, compliance with legal procedures, and the EPIESP's knowledge and experience in light of its personnel composition.

### *Obligation to conclude contract with issuer*

EPIESPs must enter into a contract with the issuer in relation to the Electronic Payment Instruments Exchange Service (Article 62-15 of the PSA). Article 40, paragraph 2, item (i) of the COO on EPIESPs and the Guideline for EPIESPs II-2-2-4-2(1)(2) outline specific matters for a contract to be concluded with the issuer. These include allocation of the burden of liability for compensation for damages incurred by users, such as providing a contact desk for user complaints, criteria for compensation, method and scope of compensation, and indemnification between parties. As the major stablecoins that have already been issued and are still in circulation in other countries are permissionless stablecoins that do not assume the conclusion of a contract between the issuer and the intermediary, the obligation to conclude a contract with the issuer may impede the distribution of such stablecoins in Japan. However, if EPIESPs satisfy the obligations to repurchase them and secure assets for the repurchase, they are exempted from the obligation to conclude a contract with the issuer when listing such overseas Electronic Payment Instruments (Article 40, paragraph 1 of the COO on EPIESPs).

### *“Travel Rule”*

The APTCP imposes the following obligations on EPIESPs: (i) if the transfer of Electronic Payment Instruments occurs repeatedly with a foreign entity engaged in the exchange or management of Electronic Payment Instruments (ie, foreign EPIESPs), the EPIESPs must confirm whether such foreign entity conducts KYC on its customers at the time of the transaction (Article 10-2 of the APTCP); and (ii) a “Travel Rule” (meaning the obligation to notify customer information at the time of a transfer of Electronic Payment Instruments to the EPIESP and certain foreign EPIESPs which are the transferee (Article 10-3 of the APTCP)).

In connection with the obligations above, the Guideline for EPIESPs II-2-1-2-2(11) further imposes measures such as collecting and recording matters specified in the APTCP, investigating and analysing the attributes or nature of the unhosted wallet, and identifying and assessing associated risks for Electronic Payment Instruments that may be broadly used and traded as instruments for remittance or payment. The management must establish a system to reduce the risks of transactions with unhosted wallets being utilised for terrorist financing, money laundering, or other inappropriate purposes, regularly verify the effectiveness of the system, recognise risks in monitoring and analysis, and properly obtain information on the unhosted wallets through investigations by users or providers.

### *Additional regulations on the listing of Electronic Payment Instruments issued in foreign countries*

Under Article 30, paragraph 1, item (v) of the COO on EPIESPs, EPIESPs listing Foreign Electronic Payment Instruments are required to ensure that the relevant Foreign Electronic Payment Instruments meet the following con-

ditions: (i) the relevant Foreign Electronic Payment Instruments are issued by a person or an entity licensed to issue them in accordance with foreign laws or ordinances, (ii) the issuer of the relevant Foreign Electronic Payment Instruments manages funds necessary for the redemption of the relevant Foreign Electronic Payment Instruments and the status of the management is subject to audit, and (iii) if there is a suspicion that the relevant Foreign Electronic Payment Instruments are used for fraud or other criminal activities, the issuer must take measures such as the suspension of transactions of the relevant Foreign Electronic Payment Instruments.

In addition, an EPIESP listing Foreign Electronic Payment Instruments must covenant that if the issuer of the relevant Foreign Electronic Payment Instruments is unable to perform or otherwise fulfil its obligations, or if the value of the relevant Foreign Electronic Payment Instruments falls significantly, the EPIESP must repurchase the relevant Foreign Electronic Payment Instruments managed by it for users in Japan at a price equal to the amount for which the relevant obligations are to be performed or otherwise fulfilled, and must also secure assets necessary for the repurchase or for taking other measures necessary for ensuring equivalent protection of users (Article 30, paragraph 1, item (vi)(a) of the COO on EPIESPs).

Furthermore, an EPIESP must take steps to ensure that the amount of Foreign Electronic Payment Instruments that each user can deposit or transfer is equal to the same amount as in the case where the EPIESP lists the Electronic Payment Instruments issued by a type II funds transfer service provider (Article 30, paragraph 1, item (vi)(b) of the COO on EPIESP). The Guideline for EPIESPs I-1-2-3(2) outlines specific measures to be taken. For instance, the transfer must not exceed JPY1 million, and if the deposited amount exceeds JPY1 million, the EPIESP shall take steps to ensure that the user no longer holds the Foreign Electronic Payment Instruments that are found unlikely to be transferred (eg, repurchase of such Foreign Electronic Payment Instruments).

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Katie.Burrington@chambers.com](mailto:Katie.Burrington@chambers.com)