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Amendments to Legislation on Electronic Payment Intermediate Service Providers

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On May 26, 2017, a bill amending the Banking Act and certain other laws, including the regulations on Electronic Payment Intermediate Service Providers (“Amendments”), was enacted in the Diet. The core part of the Amendments is the development of legal systems for Electronic Payment Intermediate Services such as the introduction of a registration system. The Amendments are in response to the “Report of the Working Group on the Financial System of the Financial System Council - Institutional Development for Open Innovation” (“Financial System WG Report”) which was published by the Financial System Working Group of the Financial System Council on December 17, 2016. This newsletter presents an overview of the development of legal systems for Electronic Payment Intermediate Services in the Amendments.

I. Circumstances leading to the submission of the bill

As a result of the worldwide development of FinTech, responding flexibly and promptly to FinTech trends is becoming a significant undertaking even for the financial institutions in Japan. Financial System WG Report presented a perspective on an institutional framework to pursue open innovation between Electronic Payment Intermediate Service Providers¹ and financial institutions, while securing user protection².

In response to the contents of Financial System WG Report, certain parts of the Amendments concern the institutional development of Electronic Payment Intermediate Service Providers and are aimed at

¹ Electronic Payment Intermediate Service Providers are persons who act as intermediaries between financial institutions and their customers in the payment-related field and either communicate orders to initiate payment using IT or acquire account information and provide such information to customers in financial institutions under entrustment from customers.

² Please refer to our newsletter for more information on Financial System WG Report (http://www.amt-law.com/pdf/bulletins2_pdf/170227.pdf).

introducing a registration system and setting up rules for Electronic Payment Intermediate Service Providers³.

II. Outline of the Amendments

An outline of the Amendments concerning Electronic Payment Intermediate Services is as follows:

- (i) Definition of “Electronic Payment Intermediate Services”;
- (ii) Introduction of a registration system for Electronic Payment Intermediate Service Providers;
- (iii) Regulations governing the business of Electronic Payment Intermediate Service Providers;
- (iv) Supervision of Electronic Payment Intermediate Service Providers;
- (v) Provisions for Certified Association for Electronic Payment Intermediate Service Providers; and
- (vi) Penalties.

III. Details of the Amendments

(1) Definition of Electronic Payment Intermediate Services

In the Amendments, “Electronic Payment Intermediate Services” is defined as businesses in which either of the following acts is conducted⁴:

- (i) The business of Payment Initiation Service Providers (PISP)
Receiving orders from a depositor to conduct settlement transactions to transfer funds relating to an account and communicating such orders to the bank using an electronic data processing system under entrustment from the depositor who has a savings account at the bank (including an entrustment via two or more steps). Such communications include instances where only the information about the settlement order is provided (in which case, only the method specified by the Cabinet Office Ordinance may be used for such communication).
- (ii) The business of Account Information Service Providers (AISP)
Acquiring information regarding an account from a bank and providing such information to a depositor (including the provision of such account information by an intermediary of other persons and the provision of processed account information) using an electronic data processing system under entrustment from the depositor who has a savings account or an account for installment time deposits at the bank (including an entrustment via two or more

³ <http://www.fsa.go.jp/common/diet/193/index.html>

⁴ However, certain services set forth in (i) above are excluded from the definition of Electronic Payment Intermediate Services. Such services will be those performed for the purpose of regular payments to a certain person by a depositor prescribed in (i), and will be specified by the Cabinet Office Ordinance as those deemed to have a low possibility of a lack of user protection. It is stated in the Financial System WG Report that “Since business operators that make regular direct payment only to a specific account under an account transfer contract, such as a business operator that makes [an] account transfer payment of rent and utility charges on behalf of someone, are expected to have relatively low information security risks, exempting them from the registration system by specifying appropriate requirements should be considered”. It is expected that the services of the business operators above are excluded by the Cabinet Office Ordinance.

steps).

For example, (i) above is supposed to be a business operator that provides applications that communicate instructions for remittances from a depositor to the bank. On the other hand, (ii) above is supposed to be a business operator that provides applications that present the results of the referral of account information or the processed or analyzed account information (household accounts or portfolio information).

In addition, an Electronic Payment Intermediate Service Provider is supposed to be a business operator that communicates orders to initiate payment or provides services using account information under entrustment from depositors or holders of an installment savings account. In contrast, business operator that provides services in relation to a loan or securities business via API Connection is not the target of the Amendments.

It is stated in Financial System WG Report that the definition of bank agency services should be clarified. Although an Electronic Payment Intermediate Service Provider is defined as a business operator that provides services under entrustment “from a customer”, it is not clear as to the cases where a service provider provides services for banks as well as for customers or a service provider receives fees from banks. These points deserve continued attention.

(2) Introduction of registration system for Electronic Payment Intermediate Service Providers

In order to engage in Electronic Payment Intermediate Services, a person must be registered with the Prime Minister. A person who obtains such registration and engages in Electronic Payment Intermediate Services is called an Electronic Payment Intermediate Service Provider.

A person who intends to obtain registration must submit a registration application accompanied by: (i) a document pledging that there are no grounds for refusal of registration, (ii) the Articles of Incorporation and a certificate of registered matters (if such person is a corporation), (iii) a document indicating the details and method of the business concerning the Electronic Payment Intermediate Services as provided in the Cabinet Office Ordinance, and (iv) other documents specified by the Cabinet Office Ordinance.

The Amendments lists the grounds for refusing registration. For example, a registration application will be refused if the applicant:

- (i) does not meet the financial standard specified by the Cabinet Office Ordinance which is required for conducting Electronic Payment Intermediate Services properly and reliably;
- (ii) has not established a system in which the Electronic Payment Intermediate Services can be conducted properly and reliably;
- (iii) has received an administrative disposition of rescission of its registration, and five years have not passed since the date of such disposition;
- (iv) has violated provisions of the Banking Act, etc. and has been sentenced to a fine, and five years have not passed since the applicant served out the sentence or ceased to be subject to the sentence;

- (v) is a foreign corporation which has not appointed a representative in Japan; or
- (vi) is a corporation with an officer who satisfies any of the grounds for refusal of registration.

As stated above, foreign corporations are not required to have office in Japan, but they are required to appoint a representative in Japan. Furthermore, Electronic Payment Intermediate Service Providers will be required to satisfy the financial standard specified by the Cabinet Office Ordinance which, according to the statement of director-general of FSA (Financial Service Agency), is not expected to vary regardless of the type of business conducted by the Electronic Payment Intermediate Service Provider⁵.

(3) Regulations governing the business of Electronic Payment Intermediate Service Providers

Major regulations governing the business of Electronic Payment Intermediate Service Providers are as follows:

- (i) An Electronic Payment Intermediate Service Provider that intends to conduct services that constitute Electronic Payment Intermediate Services must, in principle, disclose certain matters in advance, as specified by the Cabinet Office Ordinance. Such matters include the trade name or address, authority, indemnity, and the contact details of the office dealing with complaints.
- (ii) In regard to Electronic Payment Intermediate Services, Electronic Payment Intermediate Service Providers must: (a) provide information to prevent misunderstandings, (b) ensure proper handling of user information, (c) ensure safety management, and (d) take measures to manage outsourcing contractors, as specified by the Cabinet Office Ordinance.
- (iii) Electronic Payment Intermediate Service Providers must conduct business in good faith.
- (iv) Electronic Payment Intermediate Service Providers must conclude a contract regarding Electronic Payment Intermediate Services⁶ with a bank before performing acts that constitute Electronic Payment Intermediate Services. Furthermore, the Electronic Payment Intermediate Services provided must be in accordance with such contract.
- (v) If banks and Electronic Payment Intermediate Service Providers conclude the contract described in (iv) above, they must, without delay, publish matters regarding: (a) the allocation of indemnity liability in cases where users suffer damage, (b) the measures for proper handling of user information, and (c) the measures for safety management.
- (vi) In concluding a contract with Electronic Payment Intermediate Service Providers, banks must prepare and publish the standards required for Electronic Payment Intermediate Service Providers and must not treat the Electronic Payment Intermediate Service Providers that meet such standards in an unjust or discriminatory manner⁷.

⁵ According to the statement of director-general of FSA, the financial standard is expected to require that an Electronic Payment Intermediate Service Provider not be in a state of insolvency.

⁶ For purposes of 3.(3)(iv), the contract must specify the matters regarding the allocation of indemnity liability in cases where users suffer damage and the measures for proper handling of user information and for safety management.

⁷ In this regard, FISC (The Center for Financial Industry Information Systems) is currently working on a connection checklist.

(4) Supervision of Electronic Payment Intermediate Service Providers

Major provisions concerning supervision of Electronic Payment Intermediate Service Providers are as follows:

- (i) Preparation and retention of books and documents;
- (ii) Preparation and submission of a business report;
- (iii) Order for production of a report and on-site inspections; and
- (iv) Orders to improve business operations and other dispositions for the purpose of supervision.

(5) Provisions for Certified Association for Electronic Payment Intermediate Service Providers

Rules pertaining to the certification requirements and the business were made in relation to the Certified Association for Electronic Payment Intermediate Service Providers. Under these rules, a general incorporated association, which is established by an Electronic Payment Intermediate Service Provider and is deemed to meet certain requirements, may conduct operations as a Certified Association for Electronic Payment Intermediate Service Provider. Such operations include instructing its members regarding compliance with the applicable laws and regulations.

(6) Penalties

Major penalties concerning the Electronic Payment Intermediate Services are as follows⁸:

- (i) Imprisonment for up to three years, a fine up to three million yen, or both, for:
 - Performing the Electronic Payment Intermediate Services without registration, or
 - Registration through fraudulent means.
- (ii) Imprisonment for up to two years, a fine up to three million yen, or both, for:
 - Violation of an order to suspend all or part of the business.
- (iii) Imprisonment up to one year, a fine up to three million yen, or both, for:
 - Failure to submit a business report or to disclose the matters to be described, or submission of a false document,
 - Violation of an order for submission of reports or refusing an inspection, or
 - Submission of registration applications or attached documents which contain false statements or information.
- (iv) Imprisonment up to one year, a fine up to five hundred thousand yen, or both, for:
 - Violation of the duty of confidentiality by the officers, etc. of the Certified Association for Electronic Payment Intermediate Service Providers.

IV. Amendment of other laws related to Electronic Payment Intermediate Services

Amendments relating to Electronic Payment Intermediate Services will also be made to the Agricultural Cooperative Act, the Fishery Cooperative Act, the Small and Medium-Sized Enterprise Cooperatives Act, the Act on Financial Businesses by Cooperatives, the Shinkin Bank Act, the Labor Bank Act, the Norinchukin Bank Act and the Shoko Chukin Bank Limited Act in accordance with the Banking Act.

⁸ Dual criminal liability provisions also provide for the punishment of corporations.

If a person registered as an Electronic Payment Intermediate Service Provider under the Banking Act intends to engage in Electronic Payment Intermediate Services in cooperation with the above mentioned financial institutions other than banks, such person is not required to be registered multiple times under each Act above. In such case, it only has to submit a written notification to the regulator.

V. Enforcement

The Amendments will come into effect as of the day specified by the Cabinet Order, which must be within one year of the date of promulgation of the Amendments.

VI. Transitional Measures

(1) Transitional measures concerning Electronic Payment Intermediate Service Providers

Those who have already been engaged in Electronic Payment Intermediate Services when the Amendments come into effect may provide such Electronic Payment Intermediate Services without registration for period of six months from the effective date of the Amendments.

As for the Electronic Payment Intermediate Service Providers described in III(1)(ii) above (i.e., AISP), the obligation to conclude contracts with banks is postponed until the date set forth in the Cabinet Order, which must be within two years from the effective date of the Amendments.

(2) Transitional measures concerning banks

Banks must determine and publish a policy regarding coordination and cooperation with Electronic Payment Intermediate Service Providers within nine months from the date of promulgation of the Amendments.

A bank seeking to conclude a contract with an Electronic Payment Intermediate Service Provider must endeavor to establish a system in which such Electronic Payment Intermediate Service Provider is able to provide its Electronic Payment Intermediate Services relating to such bank without having to acquire from the users of the Electronic Payment Intermediate Services their identification codes until the date set forth in the Cabinet Order, which must be within two years from the effective date of Amendments (Obligation to make efforts regarding system establishment for Open API).

VII. Concluding remarks

With regard to Electronic Payment Intermediate Service Providers that act as intermediaries between financial institutions and their customers and provide payment-related services to such customers, the desire is to establish a clear institutional framework by legislation and to ensure the convenience of users through sufficient security measures. The provisions of the Cabinet Order, the Cabinet Office Ordinance and the Guidelines which are expected to be published in the months ahead, as well as the planned role

of the Certified Association for Electronic Payment Intermediate Service Providers, deserve continued attention, as a balanced institutional framework which does not hinder the technical development and innovation of business operators in the field of payment is essential.

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