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Amendments to Installment Sales Act¹

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On December 2, 2016, legislation to amend the Installment Sales Act (the “**Act**”) was enacted in the Diet for the main purpose of fortifying the management of member stores and regulations for the appropriate management of credit card information. Subsequently, on December 1, 2017, relevant subordinate legislation (including amendments to the Ordinance for Enforcement of the Installment Sales Act (the “**Ordinance**”)) was announced. The amended Installment Sales Act and its subordinate legislation (the “**Amendments**”) came into effect on June 1, 2018. In this Newsletter, we provide an outline of the key implications of the amended Installment Sales Act.

I. Circumstances leading to Amendments

Credit card transactions in Japan were previously conducted under an arrangement where credit card issuers would (i) issue and deliver credit cards to consumers, and (ii) conclude membership agreements with providers of goods and services (collectively, the “**Merchants**”). Under such membership agreements, Merchants would become member stores that allow cardholders to purchase goods and services through the relevant credit cards (such a transaction form is called “**On-Us Transactions**”). Up until recently, the laws and regulations in Japan catered to such traditional arrangements in credit card payment. However, the roles of credit card issuers to issue and deliver credit cards to consumers (the “**Issuer**” role) and to conclude membership agreements with the Merchant (the “**Acquirer**” role) have diverged (“**Off-Us Transactions**”). Increasingly, the traditional arrangement is being replaced, by one in which a third party payment service provider settles and brokers payments between an Acquirer and a member store². At the same time, as a

¹ We previously issued a newsletter in Japanese in June 2018, which is posted on our website (see below link). However, this English newsletter is not a literal translation of Japanese version.
https://www.amt-law.com/asset/pdf/bulletins2_pdf/180615.pdf

² Ministry of Economy, Trade and Industry (METI) “Industrial Structure Council; Commerce Distribution and Industrial Safety Policy Group; Report of Subcommittee on Specific Commercial Transactions (July 3, 2015)”
(http://www.meti.go.jp/committee/sankoushin/shojo/kappuhanbai/pdf/report_02_01.pdf) (Japanese version only)

result of advancements in FinTech, payments by way of smart phones and other electronic means offered by payment service providers have also risen in popularity. These developments have resulted in the need for measures to address the entry of payment service providers into the payments industry. In addition, there are increasing numbers of incidents of data leakages of credit card numbers by Merchants and/or incidents of unauthorized use of credit card numbers.

In view of these developments, the Amendments, which aim to ensure a safe environment for credit card use and to enhance the protection of credit card users, were enacted in December 2016, and subsequently came into effect on June 1, 2018. What follows is an outline of the Amendments³.

II. Outline of the Amendments

1. Establishment of new regulations applicable to Merchants handling credit cards

(1) Obligation to appropriately manage credit card numbers

As a result of the Amendments, a Merchant that sells to consumers products for which credit cards can be used is now defined as a “**Business Operator Handling Credit Card Number**”⁴ together with credit card issuers and Acquirers⁵. A Business Operator Handling Credit Card Number must ensure that it appropriately manages credit card information and takes the following measures for such purpose⁶:

- To take necessary and appropriate measures to prevent the occurrence of leakage, loss, damage of Credit Card Number and other incidents pertaining to the management of Credit Card Number (“**Leakage and Other Incidents**”);
- In the event that a Leakage and Other Incident occurs or is likely to occur, to ascertain the status of such incident immediately, prevent such incident from spreading and to promptly carry out investigations necessary to ascertain the cause thereof according to the status of the incident (including identification of Credit Card Numbers affected by the incident);
- In the event that a Leakage and Other Incident occurs or is likely to occur, to prevent the recurrence of similar Leakage and Other Incidents;
- Not to handle Credit Card Numbers in a manner that prevents the sound development of transactions pertaining to the intermediation of purchases of credit cards or lacks protection of the interests of customers.

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³ In addition to those stated below, the Amendments implemented, among others, measures to mitigate the obligations of member stores to deliver documents when using credit cards (more than two (2) months including installments and revolving payments) and enable member stores to deliver the information by email and other means (Article 30-2-3, paragraph 4 of the Act).

⁴ “**Credit Card Number**” here means the number, symbol, or other code that is issued to a user by credit card issuers in the course of business (Article 35-16, paragraph 1 of the Act).

⁵ The main paragraph of Article 35-16, paragraph 1 and Article 35-16, paragraph 1, item (iii) of the Act.

⁶ Article 132 of the Ordinance.

(2) Obligation to give instructions to entrusted parties

As a result of the Amendments, a Merchant that sells to consumers products for which credit cards can be used is obliged to instruct any entrusted party to take appropriate measures to manage Credit Card Number that it is entrusted with (including those entrusted by such entrusted parties) (the “**Entrusted Business Operators Handling Credit Card Numbers**”)⁷.

(3) Administrative measures and penalties concerning appropriate management of credit card information

As a result of the Amendments, the following administrative measures and penalties with respect to the Business Operator Handling Credit Card Number including a Merchant that sells to consumers products for which credit cards can be used have been introduced:

- Reporting and Collection System
The Minister of Economy, Trade and Industry (the “**Minister**”) may order a Business Operator Handling Credit Card Number or the Entrusted Business Operators Handling Credit Card Number to make a report of the status of its management of Credit Card Number⁸. In addition, the Minister may order the Business Operator Handling Credit Card Number to submit reports, books and documents relating to its business, and other articles⁹.
- On-Site Inspection System
The Minister may have the relevant officials enter the business office or other office of the Business Operator Handling Credit Card Number to inspect its books and documents and other articles¹⁰.
- If the Business Operator Handling Credit Card Number or its officer or employee, or a person that has held one of these positions, provides another party with, or misappropriates, Credit Card Number acquired in the course of business in order to wrongfully obtain a personal benefit or to benefit a third party, such person is punishable by imprisonment with required labor for not more than three years or by a fine of not more than 500,000 yen¹¹.

2. Registration system concerning Business Operators Concluding Contracts Handling Credit Card Number

(1) Outline

Against a background of increasing risk of leakage by Merchants and the unauthorized use of Credit Card Number, more regulation of Merchants was recognized to be necessary. Therefore, under the Amendments, certain requirements are now imposed under the Act, including a requirement for a person that falls under any of the following categories to be registered as a “**Business Operator Concluding Contracts Handling Credit Card Number**”¹² with the Ministry of Economy, Trade and

⁷ Article 35-16, paragraph 3 of the Act, Article 133 of the Ordinance.

⁸ Article 40, paragraph 7 of the Act. Detailed matters to be reported are prescribed under Article 31, paragraph 11 and paragraph 12 of the Order for Enforcement of the Installment Sales Act.

⁹ Article 40, paragraph 8 of the Act. Detailed matters that can be requested for reporting are prescribed under Article 31, paragraph 13 of the Order for Enforcement of the Installment Sales Act.

¹⁰ Article 41, paragraph 3 of the Act.

¹¹ Article 49-2, paragraph 1 of the Act.

¹² Article 35-17-2 of the Act. Contracts concluded with the Merchant that allow the Merchant to handle Credit Card

Industry:

- A credit card issuer that engages in the conclusion of contracts with a Merchant that seeks to sell to consumers products for which credit cards can be used that allow such Merchant to handle Credit Card Number given by such issuer to users¹³;
- A person that engages in the conclusion of contracts with a Merchant that seeks to sell to consumers products for which credit cards can be used that allow such Merchant to handle Credit Card Number given by a specific credit card issuer to users for the benefit of such credit card issuer¹⁴.

(2) Legal obligations of the Business Operator Concluding Contracts Handling Credit Card Number

Business Operators Concluding Contracts on Handling Credit Card Number are required to comply with the following legal obligations:

- (i) Obligation of investigation before the conclusion of Contracts on Handling Credit Card Number
If the Merchant seeks to conclude Contracts on Handling Credit Card Number, the Business Operator Concluding Contracts Handling Credit Card Number is obliged to investigate matters concerning the presence or absence of the possibility to cause damage to the appropriate management of Credit Card Number or prevention of unauthorized use of Credit Card Number by users before concluding the Contracts on Handling Credit Card Number (“**Appropriate Management of Credit Card Number**”) (“**Matters to be Investigated on Member Stores**”)^{15,16,17}.
- (ii) Obligation not to conclude Contracts on Handling Credit Card Number with a Merchant that does not comply with the standards
If it is deemed that the measures that a Merchant seeks to take in order to appropriately manage Credit Card Number and to prevent their unauthorized use do not or is not likely to comply with each of the standards concerning the measures for appropriate management prescribed in the Act, the Business Operator Concluding Contracts Handling Credit Card Number shall not conclude the Contracts on Handling Credit Card Number¹⁸.
- (iii) Obligation of continuous investigation
The Business Operator Concluding Contracts Handling Credit Card Number must investigate into Matters to be Investigated on Member Stores on a regular basis or as necessary, ^{with respect to a}

Number in order to enable transactions using credit cards are defined as “**Contracts on Handling Credit Card Number**” (Article 35-17-5, paragraph 1, item (viii) of the Act).

¹³ Article 35-17-2, item (i) of the Act. The Acquirer in the case of On-Us Transaction falls under this category.

¹⁴ Article 35-17-2, item (ii) of the Act. The Acquirer in the case of Off-Us Transactions and the payment service providers in the case of On-Us and Off-Us Transactions fall under this category.

¹⁵ Matters prescribed in each item of Article 133-5 of the Ordinance are “Matters to be Investigated on Member Stores”, and Article 133-6, paragraph 2 through paragraph 9 prescribe the details of “Matters to be Investigated on Member Stores”.

¹⁶ Article 35-17-8, paragraph 1 of the Act.

¹⁷ Detailed method of investigation is prescribed in the Ordinance.

¹⁸ Article 35-17-8, paragraph 2 of the Act.

Merchant that sells to consumers products for which credit cards can be used , that have concluded Contracts on Handling Credit Card Number¹⁹.

(iv) Obligation to take measures by the cancellation or otherwise of Contracts on Handling Credit Card Number

If it is deemed that the measures to appropriately manage Credit Card Number and to prevent their unauthorized use taken by a Merchant that sells to consumers products for which credit cards can be used do not or are not likely to comply with the standards prescribed in the Act, Business Operators Concluding Contracts Handling Credit Card Number must give instructions to comply with the standards of the laws and regulations and to prevent recurrence of leakage and unauthorized use²⁰. In addition, Business Operators Concluding Contracts on Handling Credit Card Number must take measures by the cancellation or otherwise of Contracts on Handling Credit Card Number concluded with member stores that do not follow the instructions.

(v) Obligation to prepare and archive records of investigations

Business Operators Concluding Contracts on Handling Credit Card Number must prepare and archive records of investigations carried out pursuant to the provisions of the Act²¹.

(vi) Measures concerning business operations

Business Operators Concluding Contracts on Handling Credit Card Number must take the necessary measures to appropriately manage information about Credit Card Number that they acquire in the course of their services pertaining to the conclusion of Contracts on Handling Credit Card Number. In addition, if they entrust the management of such information, supervision of employees and handling of such information to an entrusted party, they must take necessary and appropriate measures with respect to the supervision of the entrusted parties in order to prevent leakage, loss or damage of such information²².

(3) Prevention of unauthorized use of Credit Card Number

A Merchant that sells to consumers products for which credit cards can be used must take measures necessary to prevent unauthorized use of Credit Card Number by users in accordance with the standards prescribed in the Ordinance²³.

(4) Details of registration system

In order to be registered as a “Business Operator Concluding Contracts Handling Credit Card Number”, it is necessary to submit to the Minister an application stating (i) its name, (ii) the names and locations of its principal office and other business offices (in the case of a foreign company, its principal office and the principal business office and other business offices in Japan), and (iii) the

¹⁹ Article 35-17-8, paragraph 3 of the Act, Article 133-7, Article 133-8 of the Ordinance.

²⁰ Article 35-17-8, paragraph 4 of the Act, each item of Article 133-9 of the Ordinance.

²¹ Article 35-17-8, paragraph 5 of the Act, Article 133-10 of the Ordinance.

²² Article 35-17-9 of the Act, Article 133-11 of the Ordinance.

²³ Article 35-17-15 of the Act, Article 133-14 of the Ordinance.

names of its officers, together with certain ancillary documents²⁴.

In addition, a person that is not a corporation, a foreign corporation that does not have its business office in Japan, an entity that does not specify sufficient internal rules to procure the proper implementation of its services pertaining to the conclusion of Contracts on Handling Credit Card Number, or an entity that does not have in place the necessary system to comply with the internal rules required by the Act cannot obtain registration²⁵.

(5) Administrative measures and penal provisions for Business Operators Concluding Contracts on Handling Credit Card Number

A registered “Business Operator Concluding Contracts Handling Credit Card Number” may be subject to improvement orders²⁶, suspension of registration²⁷, orders to submit reports, books and documents relating to its business²⁸ and on-site inspections²⁹ by the Minister.

A person that has concluded a Contract on Handling Credit Card Number in the course of trade without registration as a Business Operator Concluding Contracts Handling Credit Card Number is subject to punishment by imprisonment with required labor for not more than three years, a fine of not more than 3,000,000 yen, or both³⁰. In addition, a Business Operator Concluding Contracts Handling of Credit Card Numbers that has violated the above improvement orders is subject to punishment by a fine of not more than 1,000,000 yen³¹.

(6) Membership in the Certified Installment Sales Association

A Business Operator Concluding Contracts Handling Credit Card Number will be made a membership of the Certified Installment Sales Association (the “**Association**”), a self-regulatory organization authorized by the Minister established by credit card issuers under the Act³². If a Business Operator Concluding Contracts Handling Credit Card Number that is a member of the Association acquires information about acts that are committed by a Merchant with which it has concluded a Contract on Handling Credit Card Number and which causes damage to the appropriate management of Credit Card Number, it is required to report such information to the Association³³.

(7) Transitional Measures

An entity which concludes a Contract on Handling Credit Card Number in the course of trade as of June 1, 2018, the effective date of the Amendments, will not be deemed to violate the registration obligation for a period of six (6) months from the effective date (if it has submitted an application for registration as a Business Operator Concluding Contracts Handling Credit Card Number by that

²⁴ Article 35-17-3, paragraph 1, paragraph 2 of the Act, Article 133-2, paragraph 1, paragraph 2 of the Ordinance.

²⁵ Prescribed in detail in Article 35-17-5, paragraph 1 of the Act

²⁶ Article 35-17-10 of the Act.

²⁷ Article 35-17-11 of the Act.

²⁸ Article 40, paragraph 8 of the Act.

²⁹ Article 41, paragraph 1 of the Act.

³⁰ Article 49, item (vi) of the Act.

³¹ Article 51-5, item (v) of the Act.

³² The main paragraph of Article 35-18, paragraph 1 of the Act.

³³ Article 35-20, paragraph 2 of the Act, Article 135, paragraph 2 of the Ordinance

date, the date on which a disposition of registration or refusal of registration is given with respect to its application) even if it has not been registered as a Business Operator Concluding Contracts Handling Credit Card Number.

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