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## Revisions to the Three Classifications of Funds Transfer Services, etc.

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On March 6, 2020, the Financial Services Agency (the “**FSA**”) submitted a bill to the Diet for the revision of the Act on Sales, etc. of Financial Instruments and the Payment Services Act (the “**PSA**”) (Bill for Revising the Act on Sales, etc. of Financial Instruments etc. for Convenience and Protection of Financial Service Users (the “**Bill**”)) which is centered on (i) the establishment of a financial services intermediary business which is capable of intermediating cross-sectoral financial services of banking, securities and insurance under a single license, and (ii) the classification of funds transfer services into three categories according to certain maximum limits on remittance amounts.

This newsletter provides an outline of the Bill, focusing on the details of the revisions to the PSA in particular.

### 1 Circumstances Leading to the Revision

In the publication of the report by the FSA's Financial System Council, “Working Group on Regulations for Payment Services Providers and One-Stop Financial Services Intermediaries” (the “**WG Report**”) on December 20, 2019, it was proposed that the following be established: (i) a flexible and balanced regulatory system for realizing a more convenient, secure and safe payment service that meets the users' needs in the age of cashless payments, and (ii) an industry suitable for financial service intermediaries who are seeking to provide a convenient one-stop service through which users can receive various financial services. The Bill is based on the proposals made in the WG Report.

The Final Report of the Installment Sales Subcommittee of the Commerce, Distribution and Information Committee of the Industrial Structure Council of the Ministry of Economy, Trade and Industry (METI) (the “**ISA Subcommittee Report**”), published on December 20, 2019, sets out an

ideal framework for credit card related legislation in Japan's technological society by summarizing the course of action for the urgent issues which should be institutionalized for the time being as well as future issues. Based on the ISA Subcommittee Report, the bill for the revision of the Installment Sales Act, which was submitted to the Diet on March 3, 2020, proposes to introduce a registration system for small amount comprehensive credit purchase businesses, introduce a certification system for the investigation of the estimated amount payable by users, and expand the scope of the definition of the Business Operator Handling Credit Card Numbers. In particular, businesses hoping to broadly deal with various settlement services such as prepayments, immediate payments, and deferred payments need to pay close attention to developments in the bill for the revision of the Installment Sales Act along with the Bill.

The following is a summary of the details of the proposed revision to the PSA in the Bill (the portion of the Bill relating to the details of the revision of the PSA shall hereinafter be referred to as the **"PSA Revision"**).

## 2 PSA Revision

### 2-1 Development of Provisions Concerning Funds transfer transactions

At the time of the enactment of the current PSA, the regulations on so-called receipt agent services were formulated on the basis that "rather than hastily rushing to develop a system, it would be more appropriate to make this a future topic for discussion".

However, since "the situation surrounding receipt agent services is changing, as a new service is being provided that effectively allows transfers of money between individuals while taking the form of receipt agent services", the WG Report states that with regard to services in the form of receipt agent services, "it would be appropriate to determine whether there is a need to apply regulations to funds transfer transactions, focusing on the functions and actual conditions of each service." Specifically, it was raised for discussion that both escrow services relating to receipt agent services between individuals and receipt agent services where creditors are business operators should not be regulated as funds transfer transactions. On the other hand, it was suggested that with regard to receipt agent services between individuals, so-called "bill-splitting application" services, which are essentially money transfer services between individuals, should be regulated as funds transfer transactions.

In light of these discussions, Article 2-2 of the PSA Revision was newly established with respect to the scope of funds transfer transactions as follows:

*"Acts of accepting funds as payment from, or having another person accept funds as payment from the obligor of the monetary claim or the person who makes payment by entrustment from the obligor or by any other method similar thereto (including two or more phases of entrustment), by entrustment from the person who holds the monetary claim (the*

*"Beneficiary" in this Article), taking over of a monetary claim from the Beneficiary, or any other similar method (excluding the act of transferring such funds by delivering them to the Beneficiary), and transferring said funds to the Beneficiary, which satisfies the requirement that the Beneficiary is an individual (excluding where the person is the beneficiary as a business or for the purpose of a business), and any other requirements specified by Cabinet Office Ordinance, shall be deemed to fall under the category of a funds transfer transaction."*

Article 2-2 of the PSA Revision provides a legal basis for clarifying from the contents of the WG Report that services that substantially fall under the category of money transfer services between individuals, such as "bill splitting applications", fall under the category of funds transfer transactions. Since part of the requirements that a transaction must meet in order to be deemed to fall under the category of funds transfer transactions have been delegated to the Cabinet Office Ordinance, attention should be paid to the proposed Cabinet Office Ordinance that will be published in the future. However, according to the Bill's explanatory materials published by the FSA, it is expected that the requirements that must be met in order to exclude escrow services (including services in which a company that provides so-called flea market apps receives a payment provisionally on behalf of an individual seller (creditor)) from the scope of "funds transfer transactions", will be stipulated in the Cabinet Office Ordinance.

On the other hand, the WG Report stated that it was not necessarily important to apply regulations on funds transfer transactions to cases where "in respect of receipt agent services, (i) the creditor is a business operator or a national or local government, and (ii) it is contractually clear that the repayment of the obligation has been completed at the time when the debtor has made the payment to the receipt agent services and that there is no risk of double payment to the debtor." No special legislation has been enacted in respect of these types of receipt agent services as well. In other words, while receipt agent services that clearly fall under the category of funds transfer transactions such as "bill splitting applications" have been identified, it cannot be said that it has been clarified, that other receipt agent services do not fall under the category of funds transfer transactions. Considering that the Bill's explanatory materials published by the FSA states "Maintain the status quo (No regulation)" for other receipt agent services, it is inconceivable that all such services would immediately be required to be registered as Funds Transfer Services. However, it should be noted that since it has not been clarified that such services do not fall under the category of "funds transfer transactions", depending on any changes in circumstances, the possibility that certain types of receipt agent services other than "bill splitting applications" may be deemed to be funds transfer transactions that are subject to regulation cannot be completely ruled out.

## **2-2 Preparation of Provisions Concerning Prepaid Payment Instruments**

### **2-2-1 Measures for the Protection, etc. of Users**

The WG Report made the following recommendations regarding measures for the protection, etc. of users of prepaid payment instruments.

- (a) Systematically clarify the responsive measures required of issuers to prevent inappropriate transactions.
- (b) To add "matters concerning the preservation of user funds" as part of the information to be provided to users in relation to the method of preserving user funds.
- (c) To add "policies for dealing with unauthorized transactions" as part of the information to be provided to users in relation to the handling of unauthorized transactions.

As for the PSA Revision, in addition to providing information on the name of the issuer, the amount payable and the expiration date, etc. as provided for in Article 13, Paragraph 1 of the current PSA, issuers of prepaid payment instruments shall, pursuant to the provisions of the Cabinet Office Ordinance, take necessary measures to protect users of prepaid payment instruments and to ensure sound and appropriate management of the business of issuing prepaid payment instruments (PSA Revision, Article 13, Paragraph 3). According to the WG Report, it is expected that from the viewpoint of preventing inappropriate transactions, the establishment of an upper limit on the balance of charges that can be transferred and the establishment of a system to detect unnatural transactions, such as the establishment of the identification of persons who have received repeated transfers (measure in respect of (a) above) will be required under the Cabinet Office Ordinance.

Since there are no specific provisions in the PSA Revision relating to (b) and (c) above, it is expected that Article 22 of the Cabinet Office Ordinance Concerning Prepaid Payment Instruments delegated under Article 13, Paragraph 1, Item 5 of the current PSA will include matters concerning policies to be followed when unauthorized transactions are conducted and matters concerning the preservation of user funds. According to this WG Report, regarding the preservation of user funds, it is expected that the aforementioned Article will require issuers of prepaid payment instruments to provide users with information to the effect that preservation of more than half of the user's funds is required by law, and that the issuer will not necessarily aim to preserve the entire amount, as well as information on the preservation methods of each issuer.

## **2-2-2 Development of Management Systems for Outsourcing Contractors**

Under the current PSA, Funds Transfer Services are obliged to establish a system for managing the outsourcing of their operations to contractors (current Article 50 of the PSA), while prepaid-payment instruments issuers are not obliged to do so. For this reason, the WG Report recommended that "The provisions concerning issuers of prepaid payment instruments need to be consistent with those concerning the funds transfer service providers."

In response to this, the PSA Revision requires that the contents of the outsourced business and the trade name of the outsourced contractor, etc. be stated in the Notification of Issuer of Prepaid Payment Instruments for Own Business and the Application for Registration of Issuer of Prepaid Payment Instruments for Third-party Business (PSA Revision Article 5, Paragraph 1, Item 9 and

Article 8, Paragraph 1, Item 8). In addition, if an issuer of prepaid payment instruments outsources part of its business of issuing prepaid payment instruments to a third party (including outsourcing by way of two or more phases), it shall, pursuant to the provisions of the Cabinet Office Ordinance, provide guidance to the outsourced contractor to which such business has been outsourced and take other necessary measures to ensure the proper and secure conduct of such business (PSA Revision Article 21-2).

## **2-3 Development of Regulations Regarding Funds Transfer Services**

### **2-3-1 Creation and Establishment of the Types of Funds Transfer Services**

Under the current PSA, there is a maximum amount of money that a Funds Transfer Service Provider can process (an amount equivalent to one (1) million yen per transaction) (Article 2, Paragraph 2 of the current PSA, Article 2 of the Enforcement Ordinance of the Payment Service Act).

However, while "it has been pointed out that there is a certain level of user needs that exceed the current remittance limit", the WG Report suggested that since "most existing Funds Transfer Service Providers are handling remittances of tens of thousands of yen or less per transaction, and the balance of user funds is also in the tens of thousands of yen per person", "it would be appropriate to divide Funds Transfer Service Providers into 3 types and apply regulations in respect of each type that are neither excessive nor insufficient: (1) business operators that handle "large amount" remittances, (2) business operators that conduct business on the premise of the current regulations, and (3) business operators that handle "small amount" remittances."

In response to this, the PSA Revision has established the following 3 types of Funds Transfer Services: Type I Funds Transfer Services, Type II Funds Transfer Services, and Type III Funds Transfer Services (PSA Revision Article 36-2). Funds Transfer Service Providers are not prohibited from operating multiple types of Funds Transfer Services concurrently (See PSA Revision, Article 43, etc.).

#### **(1) Type I Funds Transfer Services**

##### **1. Definition**

"Type I Funds Transfer Services" means Funds Transfer Services other than Type II Funds Transfer Services and Type III Funds Transfer Services (PSA Revision Article 36-2, Paragraph 1).

This type corresponds to the "(1) business operators that handle 'large amount' remittances" stated in the WG Report, and is a type in which funds transfer services can be provided without a maximum limit per transfer. As described below, the proposed Cabinet Order, yet to be released, assumes that the maximum remittance amount of Type II Funds Transfer Services

will be one (1) million yen per transfer. As a result, it is expected that the key feature of Type I Funds Transfer Services will be that it can handle funds transfer transactions involving the transfer of funds exceeding one (1) million yen per transfer in the course of trade.

## 2. Introduction of a licensing system

Under the current PSA, Funds Transfer Service Providers can commence operating once they have been registered (Article 37 of the current PSA).

In this regard, the WG Report recommended that business operators handling "large amount" remittances will be "subject to a registration system in the same manner as existing Funds Transfer Service Providers, and will be further subject to an authorization system as a measure against the risks associated with handling 'large amount' remittances."

In response to this, the PSA Revision stipulates that a Funds Transfer Service Provider (who has been registered as a Funds Transfer Services Provider) must establish a business implementation plan and obtain authorization when operating Type I Funds Transfer Services (PSA Revision Article 40-2, Paragraph 1).<sup>1</sup> Changes in business implementation plans are also subject to approvals (provided, however, that any minor changes as specified by a Cabinet Office Ordinance shall be excluded) (PSA Revision Article 40-2, Paragraph 1). In addition, if a Funds Transfer Services Provider engages in Type I Funds Transfer Services without following the approved business implementation plan, this may serve as a ground for cancelling the registration of the Funds Transfer Service Provider (PSA Revision Article 56, Paragraph 1, Item 3).

## 3. Regulations on retention of funds

At the time of the enactment of the current PSA, it was pointed out that if a Funds Transfer Service Provider accepts user funds regardless of whether or not there are any funds transfer transactions, there is a risk that such funds, regardless of the amount, would violate the deposit regulations of the Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates.

The WG Report recommended that in order "to minimize the impact on users and the social and economic impact in the event of the failure of a "large amount" remittance provider, it is necessary to impose strict restrictions on the retention of user funds received by such providers."

In response to this, the PSA Revision provides that a Funds Transfer Service Provider engaged in Type I Funds Transfer Services shall not be liable to the users of Type I Funds Transfer

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<sup>1</sup> "In the case where the maximum amount of funds to be transferred through funds transfer transactions is to be specified, said maximum amount" (Article 40, Paragraph 1, Item 1(i) of the PSA Revision) and the "Method of managing the electronic data processing system used for carrying out funds transfer transactions" (Item 2 of the same Article) are required to be included in the business implementation plan. In addition to the aforesaid, the business implementation plan must also include "Other matters specified by the Cabinet Office Ordinance" (Item 3 of the same Article), so it is important to keep an eye on the Cabinet Office Ordinance that is to be published in the future.

Services for funds transfer transactions involving Type I Funds Transfer Services for which the "amount of funds to be transferred, the day on which the funds are to be transferred, and other matters specified by a Cabinet Office Ordinance" are not clear (PSA Revision Article 51-2, Paragraph 1). Furthermore, the Funds Transfer Service Provider shall not incur any liabilities relating to funds transfer transactions<sup>2</sup> in relation to Type I Funds Transfer Services beyond the period necessary for processing administrative affairs relating to the transfer of funds<sup>3</sup> or other period specified by Cabinet Office Ordinance (PSA Revision Article 51-2, Paragraph 2).

## (2) Type II Funds Transfer Services

### 1. Definition

"Type II Funds Transfer Services" means, among the Funds Transfer Services, the business of carrying out only funds transfer transactions pertaining to the transfer of funds of an amount not exceeding the amount specified by Cabinet Order as a "small amount" in the course of trade (excluding Type III Funds Transfer Services) (PSA Revision Article 36-2, Paragraph 2).

This is considered to be a type corresponding to Funds Transfer Services under the current PSA, and the "amount specified by Cabinet Order as a small amount" is expected to be one (1) million yen.

### 2. Regulations on retention of funds

With regard to the measures relating to the retention of user funds, the WG Report states that "it is appropriate not to fundamentally change the current framework for regulations on Funds Transfer Service Providers who intend to conduct business in the future on the basis of the current regulations, so as not to hinder the activities of the Funds Transfer Service Providers and their users." On the other hand, it was proposed that "it is necessary to take measures to prevent the retention of user funds that are not found to be related to funds transfer transactions."

In response to this, the PSA Revision stipulates that a Funds Transfer Service Provider must, pursuant to the provisions of the Cabinet Office Ordinance, take measures to refrain from

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<sup>2</sup> According to the WG report, the "liabilities relating to funds transfer transactions" in paragraphs 1 and 2 of this Article are not limited to the amount of money transferred to the Funds Transfer Service Provider when a user makes a remittance to another person, but also includes the balance in the so-called "wallet" set-up with the Funds Transfer Service Provider when the user of the Funds Transfer Service Provider receives a remittance from another person in the wallet.

<sup>3</sup> With regard to the interpretation of the phrase "the period necessary for processing administrative affairs relating to the transfer of funds", the WG Report states that it means the period "necessary for operational and technological processes to be completed". Specifically, it was considered that retention of funds for a certain period of time was allowed only in the following cases: "(i) In the case where there is an error in designation of the remittee account, or (ii) in the case where the funds are remitted to a financial institution on a non-business day, etc., where the business operator cannot prevent the funds from remaining in the remitter account despite its efforts, and such situation is truly unavoidable". Attention should be paid to whether specific indicators will be set out in the forthcoming draft of the Cabinet Office Ordinance or guidelines.

holding funds received from users that are deemed not to be used for funds transfer transactions (PSA Revision, Article 51). Since the details of the measures to be taken are to be specified by Cabinet Office Ordinance, attention should be paid to the forthcoming draft of the Cabinet Office Ordinance. However, the WG Report suggests that "if the amount received per user exceeds the upper limit of remittance per transaction, the Funds Transfer Service Provider may be requested to 1) confirm internally within the Funds Transfer Service Provider whether the user funds are related to funds transfer transactions, and 2) if it is determined that there is a low probability that the funds are being used for funds transfer transactions, the Funds Transfer Service Provider may request the user to withdraw the funds, and if the user does not follow the request, the Funds Transfer Service Provider may remit the funds to the user's deposit account at banks. In this case, when determining the relationship between user funds and funds transfer transactions, the following should be taken into consideration in respect of each user: (1) amount received, (2) acceptance period, (3) remittance record, and (4) purpose of use." Accordingly, it is expected that the Cabinet Office Ordinance will stipulate that Funds Transfer Service Providers shall establish internal rules regarding the handling of excess funds when the amount deposited by each user exceeds one (1) million yen, and in line with these rules, the Funds Transfer Service Provider shall confirm the relationship with funds transfer transactions and to request the withdrawal of funds.

### (3) Type III Funds Transfer Services

#### 1. Definition

"Type III Funds Transfer Services" means, among the Funds Transfer Services, the business of carrying out only funds transfer transactions pertaining to the transfer of an amount not exceeding the amount specified by Cabinet Order as a "particularly small amount" in the course of trade (PSA Revision Article 36-2, Paragraph 3).

This is considered to correspond to "3. Businesses that handle 'small amount' remittances" of the WG Report. The specific standard for "small amount" is described in the WG Report as "while keeping in mind that it should be around several tens of thousands of yen, it was suggested that it should be less than fifty thousand (50,000) yen so as not to cause inconvenience to users, considering that the funds transfer service could be used to pay utility charges and accommodation charges." Attention should be paid to whether the amount will be fifty thousand (50,000) yen in the Cabinet Order to be published in the future.

#### 2. Regulations to ensure the effectiveness of remittance ceilings

According to the WG Report, for Type III Funds Transfer Services, limits will be placed not only on the remittance amount per transaction, but also on the maximum amount receivable per user. In order to ensure its effectiveness, under the PSA Revision, the Funds Transfer Service Providers engaged in Type III Funds Transfer Services shall not be liable to the users of Type III Funds Transfer Services for any amount in excess of the amount specified in the Cabinet Order (limited to liabilities incurred in funds transfer transactions relating to Type III Funds Transfer Services) (PSA Revision, Article 51, Paragraph 3). For example, if the upper limit of



the remittance amount per transfer is fifty thousand (50,000) yen and the above-mentioned liability amount (i.e. the maximum amount of money that can be kept in a wallet set up with the Funds Transfer Service Provider) is specified to be fifty thousand (50,000) yen, this may mean that if the balance in a user's wallet is thirty thousand (30,000) yen, the design of the wallet must be such that another user cannot remit more than twenty thousand (20,000) yen to that user.

#### (4) Change of registration, etc.

Under the PSA Revision, a Funds Transfer Service Provider is required to describe the type of Funds Transfer Services in its registration application form (PSA Revision Article 38, Paragraph 1, Item 7). Therefore, when the type of the Funds Transfer Services is to be changed, a change of registration must be filed (PSA Revision, Article 41, Paragraph 1).

In addition, If a Funds Transfer Service Provider intends to make any changes to the contents and methods of the Funds Transfer Services that are specified by Cabinet Office Ordinance as being likely to result in insufficient protection for users of the Funds Transfer Services, or likely to hinder the proper and sound performance of the Funds Transfer Services ("Changes in the contents of Specified Business, etc."), a notification to that effect must be submitted (PSA Revision, Article 41, Paragraph 3). Since the significance of Changes in the contents of Specified Business is specified by Cabinet Office Ordinance, attention should be paid to the proposed Cabinet Office Ordinance to be announced in the future.

## 2-3-2 Method of Preserving User Funds

### (1) Method of preserving user funds

The WG Report noted the following issues in the current PSA.

- (a) Funds Transfer Service Providers are burdened with cash flow problems since only 3 methods, namely security deposits (i.e., deposits to a public deposit office), guarantee agreements or trust agreements, are allowed as methods of securing user funds (Articles 43 to 45 of the current PSA).
- (b) Funds Transfer Service Providers are not allowed to preserve user funds that are based on security deposits or guarantee agreements together with user funds based on a trust agreement.
- (c) The calculation frequency of the amount of user funds to be preserved is not uniform; i.e., it is "every one week" for user funds based on security deposits and guarantee agreements and "every business day" for user funds based on trust agreements (Article 43, Paragraph 1 of the current PSA, Article 11, Paragraph 1 of the Cabinet Office Ordinance Concerning Funds Transfer Service Providers, and Article 45, Paragraph 1 of the current PSA). In addition, it is stipulated that the period from the calculation date of the amount of user funds to be preserved to the actual preservation is "within one week" (Article 43, Paragraph of the current PSA), and

such one week lag is regarded as providing insufficient user protection.

- (d) In the case of preservation under a trust agreement, approval is required (Article 45, Paragraph 1 of the current PSA), that is, prior involvement of the authorities is required. On the other hand, the frequency of reporting to the authorities concerning the state of preservation of user funds by the Funds Transfer Service Providers is twice a year (Article 53, Paragraph 2 of the current PSA, and Article 35, Paragraph 1 of the Cabinet Office Ordinance Concerning Funds Transfer Service Providers), which means that the post-checking function is weak.

The WG Report made the following recommendations on these issues.<sup>4</sup>

- (a) For business operators handling "small amount" remittances, preservation of assets shall be deemed to be ensured by managing the users' funds in deposit accounts opened at banks, which is separate from the business operators' own assets.
- (b) To permit the combined preservation of user funds based on security deposits, guarantee agreements and trust agreements.
- (c) Standardize the calculation frequency of the amount to be preserved to "at least once a week" (however, for businesses handling "large amount" remittances, separate measures are required in light of the magnitude of the social and economic impact if they become bankrupt), and shorten the period from the calculation date of the amount to be preserved until the amount is actually preserved as much as possible in order to protect users.
- (d) The duties of the trustee under the trust agreement and the prior involvement of the authorities relating to the preservation of user funds should be reviewed to the minimum extent necessary. On the other hand, with a view to strengthening post-checking functions, the frequency of reporting to the authorities on the state of preservation of user funds should be increased.

As a result, the following measures are provided in the PSA Revision.

- (a) Management through bank deposits and savings etc.  
The PSA Revision stipulates that only Funds Transfer Service Providers operating Type III Funds Transfer Services may refrain from making a security deposit of all or part of the performance bond for Type III Funds Transfer Services if they submit a notification stating their bank deposit management ratio.<sup>5</sup> Further, it is stipulated that an amount of money that is not less than the amount obtained by multiplying the amount of outstanding liabilities consisting of funds in the process of being transferred by the bank deposit management ratio must be managed through deposits or savings (PSA Revision Article 45-2, Paragraph 1). In other words, if the bank deposit management ratio is set at 100%, Type III Funds Transfer Services can be

<sup>4</sup> The WG Report also recommended that "The system clearly requires Funds Transfer Service Providers using guarantee agreements as a method of preserving user funds to take measures to prevent the use of user funds in loans." It is expected that such recommendation will be incorporated by way of a Cabinet Office Ordinance delegated by Article 51 of the PSA Revision. Funds Transfer Service Providers engaged in both Funds Transfer Services and the money lending business should pay particular attention to this issue.

<sup>5</sup> The ratio of the amount of outstanding liabilities consisting of funds in the process of being transferred that is preserved by bank deposits and savings, etc. that are segregated and managed separately.

operated simply by segregating bank deposits and savings regardless of the method of asset preservation, such as security deposits, which are required under the current PSA.

In addition, a Funds Transfer Service Provider engaged in Type III Funds Transfer Services that has submitted a notification stating the bank deposit management ratio must undergo an audit by a certified public accountant, etc. with regard to the status of the bank deposit management and the relevant financial documents (PSA Revision Article 45-2, Paragraph 2).

Furthermore, a report on the status of the management of Type III Funds Transfer Services by the method of bank deposit and savings management must be prepared for each period specified by Cabinet Office Ordinance not exceeding six months and submitted to the Prime Minister together with an audit report and other documents specified by Cabinet Office Ordinance (PSA Revision Article 53, Paragraph 2, Item 2 and, Paragraph 3, Item 2).

(b) Combination of preservation methods

The PSA Revision provides that user funds based on security deposits or guarantee agreements can be combined and preserved together with user funds based on trust agreements (See the PSA Revision, Article 45, Paragraph 1).

(c) The frequency of calculation of the amount to be preserved and the period from the date of calculation of the amount to be preserved until the amount is actually preserved

According to the PSA Revision, the Funds Transfer Service Provider is required to make a security deposit for providing Funds Transfer Services within the period specified by Cabinet Office Order for each type of Funds Transfer Services (PSA Revision, Article 43).

Specifically, in the case of Type I Funds Transfer Services, the Funds Transfer Services Provider is required to make a security deposit of a performance bond, equivalent to an amount not less than the required performance bond for Type I Funds Transfer Services or each business day, within the period from aforesaid business day as specified by the Funds Transfer Service Provider up to one week from the aforesaid business day as specified by Cabinet Office Ordinance.<sup>6</sup>

On the other hand, in the case of Type II Funds Transfer Services or Type III Funds Transfer Services, the Funds Transfer Services Provider may specify a period of up to one week for the calculation of the amount to be preserved (the "Calculation Period") for each type of Funds Transfer Service. The Funds Transfer Services Provider is then required to make a security deposit of a performance bond, in an amount equal to or greater than the maximum amount of the required performance bond for Type II Funds Transfer Services or Type III Funds Transfer Services, for each type of Funds Transfer Services within a period as specified by the Funds Transfer Services Provider, where such period for making a security deposit of the performance bond shall not be later than one week from the end of the Calculation Period (Record Date),

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<sup>6</sup> On the premise of the use of a trust agreement, this may be specified as within two business days from the day following the relevant business day (see the WG Report).

as specified by Cabinet Office Ordinance.

Provided, however, that in the case where a guarantee agreement of a performance bond or a trust agreement of a performance bond has been concluded, the above-mentioned security deposit need not be made with regard to the secured amount or the amount of trust property under each of those agreements (PSA Revision Articles 44 and 45). In addition, as mentioned in (a) above, only a Funds Transfer Service Provider engaged in Type III Funds Transfer Services is permitted to refrain from making a security deposit for the performance of Type III Funds Transfer Services in an amount equivalent to the bank deposit management ratio provided it submits a notification stating the bank deposit management ratio.

(d) Involvement of the authorities

Under the PSA Revision, the approval system for trust agreements of a performance bond was changed to a notification system (PSA Revision, Article 45, Paragraph 1).

On the other hand, the frequency of reporting to the authorities on the state of preservation of user funds of the Funds Transfer Services has been amended as a "period not exceeding six months specified by Cabinet Office Ordinance" (PSA Revision, Article 53, Paragraph 2). This will be clarified in the proposed Cabinet Office Ordinance to be published in the future, but according to the WG Report, the frequency is expected to be four times a year.

(2) Businesses with a combination of multiple types of Funds Transfer Services

As a general rule, it is necessary for a Funds Transfer Service Provider engaged in two or more types of Funds Transfer Services to manage separately the amounts that need to be preserved for each type of Funds Transfer Service. The PSA Revision stipulates that if the calculation period, etc. for each type of performance bond for providing Funds Transfer Services is the same for all or part of the types of Funds Transfer Services, the Funds Transfer Service Provider may, by giving notification, make a performance bond for providing Funds Transfer Services, etc. for the whole of the Funds Transfer Services (PSA Revision, Article 58-2).

### **3 Enforcement**

The PSA Revision is to be issued on the date specified by Cabinet Order no later than one (1) year from the date of promulgation of the Bill (Schedule to the Bill, Article 1, Item 2).

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