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## Revisions on Establishment of Financial Services Intermediary Business

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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 (the “**ASFI**”) and the Payment Services Act (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 ASFI 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 users’ needs in the age of cashless payments, and (ii) an industry suitable for financial services 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 following is a summary of the details of the proposed revision to the ASFI in the Bill (the portion of the Bill relating to the details of the revision of the ASFI shall hereinafter be referred to as the “**ASFI Revision**”).

## 2 ASFI Revision

### 2-1 Change to Name of Act

The name of the act will be changed from the “Act on Sales, etc. of Financial Instruments” to the “Act on Provision of Financial Services”.

### 2-2 Establishment of Financial Services Intermediary Business

In the “Report on the development of regulations regarding payment and settlement and cross-sectional financial services intermediaries – basic concept” published on July 26, 2019 by the Study Group on the Financial System of the Financial System Council (the “**Basic Concept**”), it was pointed out that, under the current system, a business operator would have to bear the following if it intends to intermediate the financial services which are provided by multiple financial institutions across multiple business types (banking, securities and insurance).

- (1) Under current regulations, financial services are divided into “functions”, such as by bank agents and electronic payment service providers under the Banking Act, financial instruments intermediary service providers under the Financial Instruments and Exchange Act, and insurance agents and insurance brokers under the Insurance Business Act. Therefore, a business operator handling products and services across multiple “functions” would be required to apply for multiple licenses.
- (2) Under current regulations, if a business intends to act as the agent or the intermediary for multiple financial institutions (i.e. the principals) in handling the products and services provided by such financial institutions, it would have to bear the significant burden of responding to the instructions given by each relevant principal financial institution.

Therefore, the following concept was drawn up in the Basic Concept.

- (1) To enable a business operator to engage in intermediary services of products and services across multiple business types, without having to apply for multiple licenses for each business type.
- (2) To ensure the protection of users such as by limiting the products and services available for handling, restricting the acceptance of users’ funds, and applying financial restrictions, without adopting the principal financial institution system.

In light of the above, after several discussions by the Working Group, a financial services intermediary business which does not adopt the principal financial institution system has been established in the ASFI Revision as follows.

#### 2-2-1 Scope of Business

The “financial services intermediary business” is defined as the business of engaging in any “intermediary services for deposits, etc.”, “insurance intermediary services”, “securities intermediary

services” and “money lending businesses, lending intermediary services”<sup>1</sup> (Article 11 of the ASFI Revision).

It is believed that Article 11 of the ASFI Revision defines the scope of the financial services intermediary business as activities carried out by anyone other than those who are already licensed or registered to engage in the relevant existing areas of intermediary services, so as to prevent the new regulations applying to financial services intermediary businesses from being extended to the activities of existing intermediaries.

In addition, it was proposed in the WG Report that those who intend to engage in existing intermediary services should not be permitted to engage in intermediary services as a new intermediary in the relevant area. Such prohibition on engaging in multiple businesses is reflected in Article 16, Paragraphs 4 and 6 of the ASFI Revision, Article 50-2, Paragraph 11 and 12 of the revised Financial Instruments and Exchange Act, Article 52-52, Item 6 of the revised Banking Act, Article 10, Paragraph 1, Item 6 of the revised Money Lending Business Act, and Article 280, Paragraph 3 and Article 290, Paragraph 3 of the revised Insurance Business Act.

(Scope of Business)

	Intermediated Financial Institutions	Permitted Services	Exclusions
Intermediary Services for Deposits, etc.	· Banks, etc.	· Intermediation for conclusion of contracts for accepting deposits, etc. on behalf of banks, etc. · Intermediation for conclusion of contracts for providing loans or discounting bills (excluding any such acts conducted by a money lender in favor of its customer) · Intermediation for conclusion of contracts for funds transfer transactions on behalf of banks, etc.	· Bank agents
Insurance Intermediary Services	· Insurance companies · Foreign insurance companies, etc. · Small amount and short term insurance companies	· Intermediation for conclusion of insurance contracts	· Specified insurance agents · Insurance brokers · Specified small amount and short term insurance agents

<sup>1</sup> It was proposed in the WG Report that, “it would be appropriate to exclude ‘acting as agent’ from the scope of intermediary activities of a new intermediary business”. “Acting as agent” is also not included in the definition of “financial services intermediary business” in Article 11 of the ASFI Revision.

<p style="text-align: center;">Securities Intermediary Services</p>	<ul style="list-style-type: none"> <li>· Financial Instruments Business Operators engaged in Type-I financial instruments business (excluding Type-I small-amount electronic public offering services) or investment management business (excluding investment management business for qualified investors)</li> <li>· Registered financial institutions</li> </ul>	<ul style="list-style-type: none"> <li>· Intermediation for purchase and sale of securities (excluding any such act falling under the Proprietary Trading System)</li> <li>· Intermediation for purchase and sale of securities in the financial instruments exchange market or foreign financial instruments market or consignment of market derivatives transactions or foreign market derivative transactions</li> <li>· Handling public offerings or secondary distribution of securities or handling private placements of securities or offers to sell, etc. to professional investors on behalf of those listed in the left column</li> <li>· Intermediation for conclusion of investment advisory contracts or discretionary investment contracts</li> </ul>	<ul style="list-style-type: none"> <li>· Financial Instruments Business Operators engaged in Type-I financial instruments business</li> <li>· Financial instruments intermediary service providers</li> </ul>
<p style="text-align: center;">Money Lending Businesses, Lending Intermediary Services</p>	<ul style="list-style-type: none"> <li>· Money lenders</li> </ul>	<ul style="list-style-type: none"> <li>· Intermediation for conclusion of contracts for providing loans or discounting bills (excluding any such act conducted as business based on provisions under other laws and each Item listed under Article 2, Paragraph 1 of the Money Lending Business Act (excluding Item 2))</li> </ul>	<ul style="list-style-type: none"> <li>· Money lenders</li> </ul>

These services do not include the handling of financial instruments which are specified by Cabinet Order as requiring highly specialized explanations to customers. Therefore, attention must be paid to the details of the Cabinet Order to be released in the future. According to the Working Group's explanatory materials, it is assumed that the scope of the products which a financial services intermediary business operator will be permitted to handle will be as follows<sup>2</sup>.

		Permitted	Prohibited
Intermediary Services for Deposits, etc.	Acceptance of deposits, etc.	<ul style="list-style-type: none"> <li>· Savings deposits</li> <li>· Fixed/Cumulative deposits</li> </ul>	<ul style="list-style-type: none"> <li>· Structured deposits</li> <li>· Foreign currency deposits</li> <li>· Currency option incorporation-type deposits</li> </ul>

<sup>2</sup> However, please note that, with respect to insurance contracts, in addition to restrictions based on the nature of the product, the WG Report proposes to set restrictions on the insurance amount and coverage period, depending on the characteristics of the product.

	Providing Loans	· Housing loans · Credit-card loans	-
	Funds transfer transactions	Money transfers	-
Securities Intermediary Services		· Government bonds/local government bonds · Listed shares/listed corporate bond certificates · Investment trusts/ETFs	· Unlisted shares/unlisted corporate bond certificates · Derivative transactions · Margin trading
Insurance Intermediary Services	Life insurance	· Whole life/term insurance · Individual pension insurance · Medical life insurance · Nursing care insurance	· Variable insurance/pension · Cancellation refund variable insurance/pension · Foreign currency insurance/pension
	Non-life insurance	· Accident insurance · Travel insurance · Golf insurance · Pet insurance	

## 2-2-2 Adoption of Registration System

### (1) Registration System

The ASFI Revision stipulates that a financial services intermediary business must be operated by a person registered with the Prime Minister (Article 12 of the ASFI Revision). In addition, a financial services intermediary business operator must file a registration of change if it intends to change the business type of the financial services intermediary business (Article 16, Paragraph 1 and Article 13, Paragraph 1, Item 4 of the ASFI Revision).

With respect to the requirements relating to the particulars of the written application for registration and the relevant supporting documents, there are some common requirements regardless of the type of financial services intermediary business, and some which are individually required according to the type of financial services intermediary business (Article 13, Paragraphs 1 and 2 of the ASFI Revision).

### (2) Conditions for Refusal of Registration

Even with respect to the conditions for refusal of registration, the ASFI Revision sets forth some common conditions which apply regardless of the type of financial services intermediary business, and some which apply specifically according to the type of financial services intermediary business (Article 15 of the ASFI Revision).

Non-participation in a certified financial services intermediary business association does not

constitute a condition for refusal of registration (see Article 15, Item 1(r) of the ASFI Revision).

(3) Operation of Both Financial Services Intermediary Businesses and Electronic Payment Services by Financial Services Intermediary Business Operator

The WG Report proposes that, “A business operator seeking to newly enter the financial services intermediary business is assumed to have a need for operating both intermediary services and electronic payment services. For the convenience of the procedures to be carried out by such business operator, a new intermediary business operator that has in place an adequate environment for carrying out its business, including an adequate information processing system which is similar to that of an electronic payment service provider, may engage in electronic payment services based on conduct regulations under the Banking Act, without the need to register as an electronic payment service provider.”

In light of the above, the ASFI Revision sets forth an exception to the effect that if a financial services intermediary business operator that engages in financial services intermediary services using information and communication technology satisfies certain requirements, it may engage in electronic payment services without obtaining registration under the Banking Act by filing a notification stating the particulars listed in each of the Items under Article 52-61-3, Paragraph 1 of the Banking Act (particulars to be stated in the written application for registration for electronic payment services) with the Prime Minister (Article 18, Paragraphs 1 and 3 of the ASFI Revision).

In such case, the financial services intermediary business operator shall be deemed to be an electronic payment service provider and the provisions of the Banking Act and other laws shall be applied thereto (Article 18, Paragraph 2 of the ASFI Revision).

(4) Payment of Security Deposit

The WG Report proposed that, “Since a principal financial institution system would not be adopted with respect to the new intermediary business, there is a need to consider a system that takes into account the fact that a new intermediary business operator would personally assume liability for damages” and that, “from the viewpoint of customer protection, it would be appropriate to require a new intermediary business operator to pay a security deposit to ensure its capability to compensate for damages.”

In light of the above, the ASFI Revision requires financial services intermediary business operators to pay a security deposit in an amount specified by Cabinet Order, and may conduct financial services intermediary services only after having filed a notification of payment of security deposit (Article 22, Paragraphs 1 to 3 and Paragraph 5 of the ASFI Revision)<sup>3</sup>. As stated above, the specific amount for such security deposit will be stipulated by Cabinet Order.

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<sup>3</sup> However, a financial services intermediary business operator who has concluded a liability insurance contract pursuant to the provisions of the Cabinet Order may, with the Prime Minister’s authorization, withhold the payment of part of the security deposit in accordance with the amount of insurance proceeds under the contract, so long as the contract remains in effect (Article 23 of the ASFI Revision).

The WG Report proposes that, “A possible consideration would be to require a certain basic amount, plus a certain percentage of the total amount of the commissions and other consideration obtained in the previous business year, as a security deposit.” The security deposit is expected to be in an amount which would not deter financial services intermediary business operators from entering the market.

### 2-2-3 Establishment of Regulations on Services

The WG Report proposes that, “Regulations deemed to be necessary regardless of the financial service to be intermediated will be imposed on a new intermediary business operator regardless of which area of banking, securities or insurance it will provide intermediary services in, whereas regulations according to the characteristics of each financial service will be imposed only on a new intermediary business operator who will handle a corresponding financial service.”

In light of the above, the ASFI Revision sets forth certain common conduct regulations which shall be imposed regardless of the business type of the relevant financial services intermediary business operator, as well as conduct regulations that are specific to the business type of each financial services intermediary business operator.

Common Conduct Regulations	<ul style="list-style-type: none"> <li>● Display of signs (Article 20 of the ASFI Revision)</li> <li>● Prohibition on name lending (Article 21 of the ASFI Revision)</li> <li>● Payment of security deposit (Articles 22 and 23 of the ASFI Revision)</li> <li>● Obligation of good faith (Article 24 of the ASFI Revision)</li> <li>● Obligation to provide information (Article 25 of the ASFI Revision)<sup>4</sup></li> <li>● Measures concerning operational management (Article 26 of the ASFI Revision)<sup>5</sup></li> <li>● Prohibition on receipt of deposits of money (Article 27 of the ASFI Revision)</li> <li>● Obligation to conclude a contract with a designated dispute resolution organization (Article 28 of the ASFI Revision)</li> </ul>
Conduct Regulations Specific to Intermediary Services for Deposits, etc.	<ul style="list-style-type: none"> <li>● Application of the provision concerning obligation to provide information (Article 52-44, Paragraph 2 of the Banking Act)</li> <li>● Application of the provision concerning prohibited acts</li> </ul>

<sup>4</sup> Article 25, Paragraph 2 of the ASFI Revision stipulates that a financial services intermediary business operator must, at the request of a customer, disclose the amount of commission, reward or any other consideration which it receives for acting as a financial services intermediary business operator, or any other matters specified by Cabinet Office Ordinance.

<sup>5</sup> The measures concerning operational management required under Article 26 of the Revised ASFI include “appropriate handling of customer information acquired in relation to the financial services intermediary business.” The WG Report proposes the establishment of a requirement that a financial services intermediary business operator must ensure the appropriate handling of undisclosed customer information, namely (i) not to use the information for the purpose of providing any other type of intermediary services, (ii) not to use the information for the purpose of its businesses that are not the intermediary businesses, and (iii) not to share the information with its group companies. The establishment of such requirement shall take into account existing regulations in respect of intermediary business operators. Attention should be paid to the details of the Cabinet Office Ordinance to be released in the future.

	relating to bank agency services (Article 52-45 of the Banking Act)
Conduct Regulations Specific to Insurance Intermediary Services	<ul style="list-style-type: none"> <li>● Application of the Commercial Code (Article 293 of the Insurance Business Act)</li> <li>● Application of the provision concerning the obligation to provide information (Article 294, Paragraphs 1 and 2 of the Insurance Business Act)</li> <li>● Application of the provision concerning the obligation to ascertain customers' intentions (Article 294-2 of the Insurance Business Act)</li> <li>● Application of the provision concerning prohibition on self-contracting (Article 295 of the Insurance Business Act)</li> <li>● Application of the provision concerning the particulars for inclusion in a closing document (Article 298 of the Insurance Business Act)</li> <li>● Application of the provision concerning prohibited acts pertaining to the conclusion of insurance contracts (Article 300, Paragraph 1 of the Insurance Business Act)</li> <li>● Application of part of the provision concerning the revocation of an offer for an insurance contract (Article 309, Paragraphs 7, 8 and 10 of the Insurance Business Act)</li> </ul>
Conduct Regulations Specific to Securities Intermediary Services	<ul style="list-style-type: none"> <li>● Application of the provision concerning the prohibition on the conclusion or cancellation of investment advisory and agency business or investment management business contracts using fraudulent means, committing assault or using intimidation and the prohibition on promising compensation for losses (Article 38-2 of the Financial Instruments and Exchange Act)</li> <li>● Application of the provision concerning the prohibition on acts by a financial instruments intermediary service provider (Article 66-14 (excluding Item 1 (a) and (b), and Item 3) of the Financial Instruments and Exchange Act)</li> <li>● Application of the provision concerning the limitation on intermediation for the purchase and sale of securities for professional investors (Article 66-14-2 of the Financial Instruments and Exchange Act)</li> </ul>
Conduct Regulations Specific to Money Lending Businesses, Lending Intermediary Services	<ul style="list-style-type: none"> <li>● Application of the provision concerning the carrying of identification cards (Article 12-4 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the prohibition on the use of organized crime group members (Article 12-5 of the Money Lending Business Act)</li> <li>● Application of the provision concerning certain prohibited acts (Article 12-6 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the restrictions on the</li> </ul>



	<p>conclusion of life insurance contracts (Article 12-7 of the Money Lending Business Act)</p> <ul style="list-style-type: none"> <li>● Application of the provision concerning the restrictions on interests and guarantee charges (Article 12-8 of the Money Lending Business Act)</li> <li>● Application of the provision concerning consultation and advice (Article 12-9 of the Money Lending Business Act)</li> <li>● Application of part of the provision concerning the posting of the conditions of a loan (Article 14 (excluding Item 4) of the Money Lending Business Act)</li> <li>● Application of the provision concerning advertising the conditions of a loan (Article 15 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the prohibition on misleading advertising (Article 16 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the delivery of documents prior to the conclusion of a contract (Article 16-2 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the delivery of documents prior to obtaining consent on life insurance contracts (Article 16-3 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the delivery of documents upon the conclusion of a contract (Article 17 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the delivery of receipts (Article 18 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the inspection of books (Article 19-2 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the restrictions on specified notarized deeds (Article 20 of the Money Lending Business Act)</li> <li>● Application of the provisions concerning the restrictions on custody of deposit passbooks pertaining to public benefits (Article 20-2 of the Money Lending Business Act)</li> <li>● Application of the provision concerning the restrictions on acts of collection (Article 21 (excluding Paragraph 2, Item 5) of the Money Lending Business Act)</li> <li>● Application of the provision concerning the return of claim deeds (Article 22 of the Money Lending Business Act)</li> </ul>
<p>Conduct Regulations Specific to Financial Services Intermediary Services Concerning Specific Financial Services Contracts</p>	<ul style="list-style-type: none"> <li>● Application of the provision concerning the system of professional investors (Chapter III, Section 1, Subsection 5 (excluding Article 34-2, Paragraphs 6 to 8, and Article 34-3, Paragraphs 5 and 6), Article 45 (excluding Items 3 and 4) of the Financial Instruments and Exchange Act)</li> </ul>

	<ul style="list-style-type: none"> <li>● Application of the provision concerning sale and solicitation (Chapter III, Section 2, Subsection 1 (excluding Articles 35 to 36-4, Article 37-2, Article 37-3, Paragraph 3, Article 37-5, Article 37-6, Paragraphs 1, 2, 4 (proviso) and 5, Article 37-7, Article 38, Items 7 and 8, Article 38-2, and Article 40-2 to 40-7) of the Financial Instruments and Exchange Act)</li> </ul>
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## 2-2-4 Establishment of Provisions on Accounting

The ASFI Revision stipulates that a financial services intermediary business operator must prepare books and business reports (Articles 33 and 34 of the ASFI Revision).

## 2-2-5 Establishment of Provisions on Supervision

Provisions relating to the supervision of financial services intermediary business operators, such as orders for the provision of reports and materials, on-site inspections, business improvement orders, rescission of registrations and cancellation of registrations, have been established (Articles 35 to 39 of the ASFI Revision).

## 2-2-6 Establishment of Provisions on Certified Financial Service Intermediary Business Association

Provisions concerning a certified financial services intermediary business association serving as a self-regulatory organization overseeing the financial services intermediary business have been established (Articles 40 to 50 of the ASFI Revision).

A financial services intermediary business operator is not obligated to participate in the certified financial services intermediary business association (see Article 15, Item 1(r) of the ASFI Revision).

## 2-2-7 Establishment of Provisions on Designated Dispute Resolution Organization

A system for the Prime Minister to designate a dispute resolution organization has been established (Articles 51 to 73 of the ASFI Revision).

## 3 Enforcement

The ASFI Revision will come into force on a date to be specified by the upcoming Cabinet Order, where such date shall be no later than one (1) year and six (6) months from the date of promulgation of the Bill.

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