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Revisions to Cabinet Order, Cabinet Office Ordinance, and Administrative Guidelines Concerning Three Classifications of Fund 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 the 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 unifying the cross-sectoral financial services of banking, securities and insurance under a single license, and (ii) the classification of fund transfer services into three categories according to certain maximum limits on remittance amounts. The Bill was passed on June 5, 2020.

Proposals of revisions to the Cabinet Order, Cabinet Office Ordinance, and related Guidelines for Administrative Processes relevant to the revisions to the PSA (the “**Proposed Revision**”) were announced on December 25, 2020, and made available for public comment until January 24, 2021. The FSA announced its response to the public comments (the “**Response to Public Comments**”) on March 19, 2021 and the Proposed Revision is scheduled to come into effect on May 1, 2021. This newsletter provides an overview of the Proposed Revision, focusing on the following points:

- (i) Development of regulations on requirements for receipt agent services that are deemed to constitute fund transfer transactions pursuant to Article 2-2 of the PSA following the revisions proposed in the Bill (the “**Revised PSA**”); and
- (ii) Development of regulations on the Fund Transfer Service Providers for each types, including with respect to maximum remittance amounts according to the types, licensing procedures, methods for preserving and managing user funds, and measures to ensure no user funds that are unlikely to be used for fund transfer transactions are retained.

In this newsletter, we refer to the details of revisions to the Enforcement Ordinance of the Payment Service Act as “**Proposed Revision to Enforcement Ordinance of PSA**”; the details of revisions to the Cabinet Office Ordinance on Fund Transfer Service Providers as “**Proposed Revision to Cabinet Office Ordinance on FTSP**”; and the proposed revision to the Guidelines for Administrative Processes (Vol. 3: Financial Companies; 14. Fund Transfer Service Providers) as “**Proposed Revision to Guidelines**”.

1. Details of Proposed Revision¹

1-1 Development of Regulations on Receipt Agent Services

At the time of the enactment of the current PSA, the establishment of a legal framework for so-called receipt agent services (i.e., application of the regulations for fund transfer transactions) was shelved for later discussions. However, in light of the subsequent changes in the situation surrounding receipt agent services, such as the emergence of “bill splitting applications”, a new regulation was introduced as Article 2-2 of the Revised PSA, under which certain receipt agent services that are considered to be equivalent to fund transfer transactions in their nature are incorporated into (and become subject to the regulations of) fund transfer transactions, as follows:

“Acts of accepting, 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 way of an entrustment from the person who holds the monetary claim (the “Beneficiary” in this Article), an assignment of the monetary claim from the Beneficiary, or any other similar method, and then transferring said funds to the Beneficiary (excluding the act of transferring such funds to the Beneficiary by delivery), which acts satisfy the requirement that the Beneficiary is an individual (excluding where the person is the beneficiary as a business provider 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 fund transfer transaction.”

According to this provision, the receipt agent services that can be classified as fund transfer transactions are those “which satisfy [...] requirements specified by Cabinet Office Ordinance”. To this end, the Proposed Revision to Cabinet Office Ordinance on FTSP² specifies in Article 1-2 such requirements as follows:

“The requirements specified by Cabinet Office Ordinance as referred to in Article 2-2 of the Act shall be that a Beneficiary (as defined in that Article; the same applies in this Article) is an individual (excluding where the person is a beneficiary constituted as a business provider or for the purpose of

¹ Proposals of revisions to the Cabinet Order, Cabinet Office Ordinance and related Guidelines for Administrative Processes relevant to the revisions to the PSA (referred to in this newsletter as “Proposed Revision to Enforcement Ordinance of PSA”, “Proposed Revision to Cabinet Office Ordinance on FTSP” and “Proposed revision to Guidelines”, respectively, and collectively as “Proposed Revision”) were all adopted as proposed with some minor adjustments.

² <https://www.fsa.go.jp/news/r2/sonota/20201225-2/04.pdf>

a business) and that any one of the following conditions are applicable:

- (i) The obligation of an obligor of a monetary claim held by a Beneficiary is not extinguished on or before funds are accepted as payment from such obligor or a person who makes payment by entrustment from the obligor or by any other method similar thereto (including two or more phases of entrustment) (“Obligor, etc.” in Item (iii)) (or, if having another person accept the funds, on or before such another person accepts the funds as payment);*
- (ii) If a monetary claim held by a Beneficiary has arisen from extending credit to an obligor of the said monetary claim by lending funds, making payment as one of joint and several obligors, or any other method similar thereto, the funds are transferred for the purpose of collecting such monetary claim; or*
- (iii) All of the following conditions are applicable:*
 - (a) For the case where a Beneficiary has an obligation to provide counter-performance to an obligor of a monetary claim held by the Beneficiary, the act concerned is not an act of accepting, or having another person accept, funds as payment from the Obligor, etc., of said monetary claim prior to, or simultaneously with, the counter-performance, and then transferring said funds to the Beneficiary after the counter-performance; and*
 - (b) The act concerned is not an act as a platform for concluding a contract which gives rise to a monetary claim to be held by a Beneficiary or otherwise having an involvement essential to forming such contract; accepting, or having another person accept, funds as payment from the Obligor, etc., of said monetary claim; and then transferring said funds, with consent of the Beneficiary, in accordance with such contract.”*

As described above, if the Beneficiary is an individual (excluding where the person is a beneficiary constituted as a business provider or for the purpose of a business) and any one of the conditions set forth in Items (i) through (iii) of said Article is applicable, then the receipt agent services are deemed to be fund transfer transactions and, accordingly, a banking license or a registration for any Fund Transfer Service Provider of Type I to Type III is required in order to engage in such transactions.

To be more specific, first, if the obligation of an obligor is not extinguished before a receipt agent service provider receives funds, then, because the obligor faces the risk of double payment, the receipt agent services are deemed to be fund transfer transactions (Item (i)). Second, considering the fact that the “bill splitting applications” that once existed were structured as receipt agent services for one of joint and several obligors to collect reimbursements from other joint and several obligors for making full payment of the joint and several obligation, Item (ii) provides that any receipt agent services designed for collecting monetary claims which have arisen from extending credit to an obligor of a monetary claim by making payment as one of joint and several obligors, or any other method similar thereto, are deemed to be fund transfer transactions. Further, even where neither Item (i) nor Item (ii) is applicable, a fund transfer transaction is deemed to have occurred where the purpose of the receipt agent services is not to provide so-called “escrow services” (Item (iii), (a)); *and* a platform operator does not receive funds

(such as, goods or service fees) on behalf of an individual Beneficiary for a transaction executed on said platform³ (Item (iii), (b)).

In addition, according to the Proposed Revision to Guidelines⁴, it is not necessarily the case that those acts that do not fall under Article 2-2 of the Revised PSA and Article 1-2 of the Proposed Revision to Cabinet Office Ordinance on FTSP will not be deemed as fund transfer transactions in the future⁵. In other words, it should be noted that acts of receipt agent services that do not fall under the above cases will not definitively be excluded from the category of “fund transfer transactions” in the future.

1-2 Development of Regulations on Fund Transfer Services

1-2-1 Establishment of the Types of Fund Transfer Services

In the Revised PSA, 3 types of Fund Transfer Services, namely Type I Fund Transfer Services, Type II Fund Transfer Services, and Type III Fund Transfer Services, have been established as follows (Revised PSA, Article 36-2):

1. Type I Fund Transfer Services

(1) Definition

“Type I Fund Transfer Services” means Fund Transfer Services other than Type II Fund Transfer Services and Type III Fund Transfer Services (Revised PSA, Article 36-2, Paragraph 1). As described below, the maximum remittance amounts for Type II Fund Transfer Services and Type III Fund Transfer Services are set at one (1) million yen per transfer and 50,000 yen per transfer, respectively (Proposed Revision to Enforcement Ordinance of PSA⁶, Article 12-2, Paragraphs 1 and 2). This means that Type I Fund Transfer Services is a type that handles fund transfer transactions involving the transfer of funds exceeding one (1) million yen per transfer. Although those involving the transfer of funds less than one (1) million yen per transfer can also be carried out with a registration of Type I Fund Transfer Services as a matter of course, it should be noted that as long as such fund transfer transactions are carried out using an account established as a Type I Fund Transfer Service Provider (i.e., unless a registration as a Type II Fund Transfer Service Provider or a Type III Fund Transfer Service Provider is separately obtained, and such fund transfer transactions are carried out based on these qualifications in an account separate from an account as a Type I Fund Transfer Service Provider), such fund transfer transactions are subject to the regulations for Type I Fund Transfer Services, including the regulations on the retention of funds as described in (3) below.

³ Flea market apps are considered typical examples.

⁴ <https://www.fsa.go.jp/news/r2/sonota/20201225-2/12.pdf>

⁵ Proposed Revision to Guidelines, I-2

⁶ <https://www.fsa.go.jp/news/r2/sonota/20201225-2/01.pdf>

(2) Introduction of an authorization system

The Revised PSA stipulates that a Fund Transfer Service Provider (who has been registered as a Fund Transfer Services Provider) must establish a business implementation plan and obtain authorization when it intends to operate Type I Fund Transfer Services (Revised PSA, Article 40-2, Paragraph 1). A business implementation plan should include the “maximum amount” if “the Type I Fund Transfer Services Provider has a plan to set the maximum amount of funds to be transferred through each fund transfer transaction” (Revised PSA, Article 40-2, Paragraph 1, Item (i)) and the “method of managing the electronic data processing system used for carrying out fund transfer transactions” (Item (ii) of the same Paragraph), as well as “other matters specified by the Cabinet Office Ordinance” (Item (iii) of the same Paragraph), which are so specified in the Proposed Revision to Cabinet Office Ordinance on FTSP as follows (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 9-3):

- (i) Method of providing fund transfer services;*
- (ii) Countries and regions in which funds are transferred through fund transfer transactions;*
- (iii) Matters concerning a system necessary for ensuring the prevention of transfer of criminal proceeds (meaning the prevention of transfer of criminal proceeds as prescribed in Article 1 of the Act on Prevention of Transfer of Criminal Proceeds (Act No. 22 of 2007)) and the prevention of terrorist financing, etc.;*
- (iv) Matters concerning a system necessary for complying with the provisions of Article 51-2 of the Act (regulations on retention of funds as described in (3) below);*
- (v) Policies on measures to be taken in the event of an accident relating to fund transfer transactions or any other event that hinders proper and secure provision of fund transfer services; and*
- (vi) Other important matters to ensure proper and secure provision of Type I Fund Transfer Services.*

(3) Regulations on the retention of funds

A Fund Transfer Service Provider engaged in Type I Fund Transfer Services is not allowed to assume any obligation to the users of Type I Fund Transfer Services for fund transfer transactions involving Type I Fund 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 (Revised PSA, Article 51-2, Paragraph 1). “Other matters specified by a Cabinet Office Ordinance” refers to “the amount of funds to be transferred”, “the day on which the funds are to be transferred”, and “the receiving party to which the funds are to be transferred” (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 32-2, Paragraph 1).

It should be noted that, according to the Proposed Revision to Guidelines, “the day on which the funds are to be transferred” refers to a day on which the transfer of funds is scheduled to

be completed, and therefore it is not a day on which Type I Fund Transfer Service Provider starts the procedures for the transfer of funds⁷.

Furthermore, the Type I Fund Transfer Service Provider is not allowed to assume any obligation for fund transfer transactions involving Type I Fund Transfer Services beyond the period necessary for processing administrative affairs relating to the transfer of funds or other period specified by Cabinet Office Ordinance (Revised PSA, Article 51-2, Paragraph 2). “Other period specified by Cabinet Office Ordinance” refers to the period necessary for processing administrative affairs relating to the transfer of funds (in the case where a receiving party of funds, as instructed by a user, is incorrect, or funds cannot be transferred due to any reason not attributable to the Fund Transfer Service Provider, the period necessary to resolve such case is included) (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 32-2, Paragraph 2). In the Proposed Revision to Guidelines, the meaning of “period necessary for processing administrative affairs relating to the transfer of funds” is explained in greater detail. Said Proposed Revision states that such period refers to a period that is operationally and technically required, and it is reasonably calculated taking into consideration the minimum period necessary for processing administrative affairs of each fund transfer transaction, such as confirmation and verification measures taken against terrorist financing and money laundering, communication with overseas bases and banks, and remittance to bank accounts⁸.

In addition, providing such services in which users of Type I Fund Transfer Services withdraw funds deposited in advance from ATMs with a card issued by a Type I Fund Transfer Service Provider or services in which funds are prepaid to a Type I Fund Transfer Service Provider by a remitter — who receives a certificate (money order) in an amount equivalent to the amount of such funds and who sends the certificate to a remittee, who then receives cash in exchange for such certificate — is, even if accompanied by specific instructions for fund transfer transactions, normally considered to result in a Type I Fund Transfer, with the Service Provider assuming the obligation for fund transfer transactions beyond the period necessary for processing administrative affairs relating to the transfer of funds. Thus, the aforesaid procedure is considered to constitute a potential violation of Article 51-2, Paragraph 2 of the Revised PSA⁹. Furthermore, when funds arrive at a remittee, some measures, such as making a deposit of funds directly into a bank account registered in advance by a user who is a remittee, are also considered necessary to prevent the unnecessary retention of funds before completing fund transfer transactions¹⁰.

As described above, it should be noted that providing fund transfer services in the form of wallet services is prohibited in Type I Fund Transfer Services, where funds deposited by users must be transferred immediately and funds received by users must be paid out immediately.

⁷ Proposed Revision to Guidelines, III-1-1-1(1)(i)(Note 2)

⁸ Proposed Revision to Guidelines, III-1-1-1(1)(ii)(Note 3)

⁹ Proposed Revision to Guidelines, III-1-1-1(1)(ii)(Note 4)

¹⁰ Proposed Revision to Guidelines, III-1-1-1(1)(iii)

(4) Security deposits

If a security deposit is selected by a Fund Transfer Service Provider as a preservation method, a Fund Transfer Service Provider is required to make a security deposit for providing Fund Transfer Services within the period specified by Cabinet Office Order for each type of Fund Transfer Services (Revised PSA, Article 43, Paragraph 1, Items (i) and (ii)). As for Type I Fund Transfer Services, a Fund 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 Fund Transfer Services for each business day, within a period as specified by the Fund Transfer Service Provider not exceeding two (2) business days from the relevant business day (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 11, Paragraph 1).

2. Type II Fund Transfer Services

(1) Definition

“Type II Fund Transfer Services” means, among the Fund Transfer Services, the business of carrying out only fund transfer transactions pertaining to the transfer of funds of an amount not exceeding one (1) million yen (excluding Type III Fund Transfer Services) (Revised PSA, Article 36-2, Paragraph 2; Proposed Revision to Enforcement Ordinance of PSA, Article 12-2, Paragraph 1). This is considered to be a type corresponding to Fund Transfer Services under the current PSA.

(2) Regulations on the retention of funds

The Revised PSA stipulates that a Fund Transfer Service Provider must, pursuant to the provisions of the Cabinet Office Ordinance, take measures to ensure that funds received from users that are deemed not to be used for fund transfer transactions are not retained by the Fund Transfer Service Provider (Revised PSA, Article 51). To this end, the Proposed Revision to Cabinet Office Ordinance on FTSP stipulates that, if the amount of obligations for fund transfer transactions (limited to those relating to Type II Fund Transfer Services) owed to each user exceeds one (1) million yen, a Fund Transfer Service Provider engaged in Type II Fund Transfer Services must establish a system to confirm whether the funds (limited to those relating to Type II Fund Transfer Services) of the users, who are the creditors of such obligations, are indeed used for fund transfer transactions (limited to those relating to Type II Fund Transfer Services) (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 30-2, Paragraph 1). As for Type II Fund Transfer Services, the existing framework for Fund Transfer Services Providers is mostly maintained. However, it should be noted that the regulations have been effectively strengthened to the extent mentioned above.

When determining the relationship between user funds and fund transfer transactions, the Proposed Revision to Guidelines requires comprehensive consideration of the following in

respect of each user: (i) amount received, (ii) acceptance period, (iii) remittance record, and (iv) purpose of use¹¹.

Specifically, for example, when having recognized that the amount received in an account exceeds one (1) million yen, a Fund Transfer Service Provider is required to confirm whether or not a fund transfer transaction is scheduled to take place and whether or not a larger amount of funds has been retained compared with the amount retained by the relevant user in the transaction history. If subsequently it is concluded that the funds are unlikely to be used for fund transfer transactions, the Fund Transfer Service Provider is required to transfer to the user's pre-registered bank account such amount deemed unlikely to be used for fund transfer transactions^{12, 13}. According to the Proposed Revision to Guidelines, IV-1-1, a Fund Transfer Service Provider is also required, upon confirmation, to return to users, or otherwise take measures to ensure it does not retain, the funds that are equal to or below one (1) million yen if they are found not to be used for fund transfer transactions, pursuant to Article 30-2, Paragraph 1 of the Proposed Revision to Cabinet Office Ordinance on FTSP. This means that wallet services are not free of restrictions even if they fall within the range of one (1) million yen or less.

(3) Security deposit

If a security deposit is selected by a Fund Transfer Service Provider as a preservation method, a Type II Fund Transfer Services Provider is required, for each period as specified by the Fund Transfer Service Provider not exceeding one (1) week, 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 Fund Transfer Services for the relevant period, within a period as specified by the Fund Transfer Services Provider not exceeding three (3) business days from the end of the relevant period (Record Date) (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 11, Paragraph 2).

3. Type III Fund Transfer Services

(1) Definition

"Type III Fund Transfer Services" means, among the Fund Transfer Services, the business of carrying out only fund transfer transactions pertaining to the transfer of an amount not exceeding 50,000 yen (Revised PSA, Article 36-2, Paragraph 3; Proposed Revision to Enforcement Ordinance of PSA, Article 12-2, Paragraph 2).

¹¹ Proposed Revision to Guidelines, IV-1-1

¹² Proposed Revision to Guidelines, IV-1-1(Note 1)

¹³ The Proposed Revision to Guidelines, III-1-1-1(1)(ii) mentions, as a point of note applicable to all 3 types, a case of returning funds by a method other than transfer to a registered bank account (see 4.(3) below). For example, funds may be returned by granting prepaid payment instruments issued by a fund transfer services provider itself (on the condition that doing so is based on a clear manifestation of intent from the user) (Response to Public Comments No.36).

(2) Regulations on the retention of funds

A Fund Transfer Service Provider engaged in Type III Fund Transfer Services is prohibited from assuming any obligation that exceeds 50,000 yen for each user of Type III Fund Transfer Services (limited to obligations assumed for fund transfer transactions involving Type III Fund Transfer Services) (Revised PSA, Article 51-3; Proposed Revision to Enforcement Ordinance of PSA, Article 17-2). In this regard, the Proposed Revision to Guidelines requires a Type III Fund Transfer Service Provider to take measures to ensure that they do not engage in fund transfer transactions that exceed the maximum amount, which is set at 50,000 yen for both the amount remitted per transaction and the amount retained per user¹⁴. Specifically, this requires a Type III Fund Transfer Service Provider to establish a system that ensures no fund transfer transactions are accepted from users that exceed 50,000 yen, as well as a system that ensures the obligations owed to each user by fund transfer transactions do not exceed 50,000 yen¹⁵. For example, if a user transfers 30,000 yen to another user with an account balance of 40,000 yen, the resulting account balance of that receiving user (remittee) will be 70,000 yen (if received in the account in full), which exceeds 50,000 yen of the maximum threshold set for the amount retained, and accordingly preventive measures are required. Some examples of such measure are stated in the Proposed Revision to Guidelines, including disallowing the remittance when the sum of the remittee's account balance and the remitter's transferring amount exceeds 50,000 yen, or making an agreement to automatically transfer 20,000 yen, the excess of the maximum threshold in our example, to a bank account¹⁶.

(3) Security deposit

If a security deposit is selected by a Fund Transfer Service Provider as a preservation method, a Type III Fund Transfer Services Provider is required, for each period as specified by the Fund Transfer Services Provider not exceeding one (1) week, 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 III Fund Transfer Services for the relevant period, within a period as specified by the Fund Transfer Services Provider not exceeding three (3) business days from the end of the relevant period (Record Date) (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 11, Paragraph 2).

(4) Management through bank deposits and savings etc.

Fund Transfer Service Providers operating Type III Fund Transfer Services may be exempted from making a security deposit of all or part of the performance bond for Type III Fund Transfer Services by submitting a notification stating their bank deposit management ratio (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), and in return they are required to manage, through a management method for deposits and

¹⁴ Proposed Revision to Guidelines, V-1

¹⁵ Proposed Revision to Guidelines, V-1-1(i)(ii)

¹⁶ Proposed Revision to Guidelines, V-1-1(ii)(Note)

savings¹⁷, an amount of money that is not less than the amount calculated by multiplying the amount of outstanding liabilities consisting of funds in the process of being transferred by the bank deposit management ratio (Revised PSA, Article 45-2, Paragraph 1). In other words, assuming that the bank deposit management ratio is 100%¹⁸, Type III Fund Transfer Services can be operated simply by segregating bank deposits and savings without using the method of asset preservation, such as security deposits, which are otherwise required under the current PSA. If the bank deposit management ratio is set at 100%, the Type III Fund Transfer Service Provider is required to provide information to users, by delivering documents or other appropriate means, pertaining to the bank deposit management ratio and the fact that users will not have a preferential claim to receive payments from the Fund Transfer Service Provider upon their bankruptcy¹⁹ (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 29-2, Item (iv)).

4. Regulations applicable to all types of Fund Transfer Services

(1) Measures required when engaging in two or more types of Fund Transfer Services

A Fund Transfer Service Provider engaged in two or more types of Fund Transfer Services is required to take measures to ensure users can readily obtain information on the amount of obligations owed to each user by the Fund Transfer Service Provider with regard to fund transfer transactions for each type of Fund Transfer Services and the user status for each type of Fund Transfer Services (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 30-4, Paragraph 1; Proposed Revision to Guidelines, VI-1-1(1)(i)). This means that such Fund Transfer Service Provider needs to provide services by specifying any one of the three types of Fund Transfer Services in respect of which each user's funds are retained, and the money transfer instructions accompanying the funds are made, for example, by differentiating the interfaces for each service.

In addition, in a case where a Fund Transfer Service Provider engages in both Type I Fund Transfer Services and Type II Fund Transfer Services receives funds related to Type II Fund Transfer Services from users and assumes obligations for fund transfer transactions related to Type II Fund Transfer Services, then said Fund Transfer Service Provider is required to take measures to prevent said obligations from falling into the category of obligations pertaining to fund transfer transactions related to Type I Fund Transfer Services (Paragraph 2 of the said Article). The purpose of this regulation is to prevent circumventions of the strict retention regulations imposed on Type I Fund Transfer Services, and the Provider is also required to explain to users in an easy-to-understand manner the measures used to prevent the switching

¹⁷ It refers to a management method by deposits and savings at banks, etc. or a management method by money trusts in financial institutions engaged in trust business with an agreement on compensation for the principal (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 21-3).

¹⁸ In this case, the minimum required performance bond is 0 yen (Proposed Revision to Enforcement Ordinance of PSA, Article 14, Item (ii)).

¹⁹ Proposed Revision to Guidelines, V-3-1(2)(ii)

of funds received from users as Type II Fund Transfer Services into funds for Type I Fund Transfer Services²⁰.

(2) Changes in the contents of Specified Business, etc.

If a Fund Transfer Service Provider intends to make any changes to the contents and methods of the Fund Transfer Services that are likely to result in insufficient protection for users of the Fund Transfer Services, or likely to hinder the proper and sound performance of the Fund Transfer Services and specified by Cabinet Office Ordinance (“Changes in the contents of Specified Business, etc.”), a notification to that effect must be submitted (Revised PSA, Article 41, Paragraph 3). The Changes in the contents of Specified Business, etc., include: (i) changes to the time of day at which the amount of outstanding obligations in the process of fund transfer is calculated on each business day and the method of calculation; (ii) changes to the calculation periods for Type II Fund Transfer Services and Type III Fund Transfer Services (excluding changes to shorten the calculation periods); (iii) changes to the deadline for security deposits (excluding changes to shorten the deadline); and (iv) changes to the timing at which the amount of completed performance is calculated (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 9-9). These are all changes related to the calculation of security deposits and these are important in terms of user protection.

(3) Measures to ensure that there is no retention of funds that are not used for fund transfer transactions

A Fund Transfer Service Provider is required to return to users, or otherwise take measures to ensure it does not retain, the funds received and deemed not to be used for fund transfer transactions (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 30-2, Paragraph 2). Specifically, the Proposed Revision to Guidelines provides that it is necessary that a method has been specified to return funds that are deemed not to be used for fund transfer transactions to the relevant users; that, if any measure other than a bank transfer to a registered bank account is taken to return funds, such method is appropriate from the viewpoint of expediency and user convenience; and that a system has been developed to receive information from users in advance that is necessary for returning funds or for taking measures in accordance with the specified method chosen²¹. Furthermore, the Proposed Revision to Guidelines specifies that paying interest on the balance of user funds will be considered to be engaged in the solicitation of user funds that is unrelated to the purpose of fund transfer transactions, and as such would violate the deposit regulations under the Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates (Article 2, Paragraph 1 of the Act)²². It should be noted that this policy is in line with previous administrative interpretations to the effect that even a fund transfer services provider using the form of wallet services is not allowed to pay interest payments on the users’ money it receives.

²⁰ Proposed Revision to Guidelines, IV-1-1(2)

²¹ Proposed Revision to Guidelines, II-2-2-1-1(5)

²² Proposed Revision to Guidelines, II-2-2-1-1(5)(Note)

(4) Measures to prevent user funds from being used as funds for loans, etc.

A Fund Transfer Service Provider is required to take measures to prevent the use of funds received from the users as funds for loans, etc. (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 30-3). Specifically, the Proposed Revision to Guidelines requires that: (i) internal rules specifically set forth a method to manage funds received from the users and funds for loans in separate deposit accounts or, if managed in the same bank account, a method that can reasonably assume and confirm that the funds received from the users are not being used as funds for loans (for example, identifying the amount of funds for a loan in a timely and appropriate manner by deducting the amount of funds received from the users from the provider's own funds, and then confirming that the loan does not exceed such amount of funds for the loan), (ii) timely and appropriate review is carried out to ensure that the funds received from the users and funds for loans are clearly separated in the manner set forth in (i) above, and that no financial arrangements are made between the account managing the funds received from the users and the account managing the funds for the loan, and (iii) from the perspective of preventing accidents and fraud, measures are implemented, such as not allowing persons in charge of managing the funds received from the users to concurrently serve as persons in charge of managing the funds for the loan²³.

(5) Reporting to the authorities

A Fund Transfer Service Provider is required to submit a written report on the Fund Transfer Services to the relevant authorities within three (3) months from the last day of its business year, dividing the report into a business summary and a document containing the status of income and expenditure for each type of Fund Transfer Services (PSA, Article 53, Paragraph 1; Proposed Revision to Cabinet Office Ordinance on FTSP, Article 34). In addition, a Fund Transfer Service Provider is required to prepare reports on the status of the preservation of user funds, including the amount of outstanding obligations, every March 31, June 30, September 30, and December 31 of each year (Report Base Dates) and submit the reports to the relevant authorities within one (1) month from the respective Report Base Dates (Revised PSA, Article 53, Paragraph 2; Proposed Revision to Cabinet Office Ordinance on FTSP, Article 35). As a result of this revision, reports on outstanding obligations, which are currently submitted twice a year in principle, will henceforth be submitted four (4) times a year.

(6) Enhancing the provision of information to users

A Fund Transfer Service Provider is required to provide the users of the Fund Transfer Services with information about the types of Fund Transfer Services it engages in, the calculation period, and the deadline for security deposits, as well as policies concerning compensation or other measures for losses of users arising from instructions related to fund transfer transaction services that are given by a person who without authority against the users' intentions (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 29-2). The background of this provision is undoubtedly the problem of illegal transfers of money from bank accounts to fund

²³ Proposed Revision to Guidelines, II-2-2-1-1(6)

transfer service providers' accounts that were carried out in 2020. In addition to the above, a description of policies in the event of such accidents is required in a business implementation plan for Type I Fund Transfer Services (Proposed Revision to Cabinet Office Ordinance on FTSP, Article 9-3, Item (v)), and the Proposed Revision to Guidelines contains additional notes in I-2-5 regarding collaboration with services provided by other service providers, such as account transfer services provided by banks. All of these are considered in response to the issue of illegal transfers mentioned above, and a broad range of provisions and descriptions have been added to require Fund Transfer Service Providers to develop a system to handle illegal transactions.

2. Enforcement

The Revised PSA is scheduled to come into effect in May 1, 2021.

- This newsletter is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information or advice, please contact the authors below:

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