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Amendments to the Payment Services Act and the Act on Prevention of Transfer of Criminal Proceeds, etc. (Introduction of Regulations on Stablecoins)¹

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On January 11, 2022, the Payment Services Working Group of the Financial System Council published, after 5 discussions in total, a report (the “Report”) on (1) the clarification and introduction of the regulations on stablecoins, and (2) the proposed tightening of regulations on prepaid payment instruments from the view point of Anti – money laundering and countering the financing of terrorism (AML/CFT) (for the details of the Report, see [the last newsletter](#)).

In response to the Report, the “Bill for partial amendment to the Payment Services Act, etc. for the purpose of establishing a stable and efficient payment and settlement system” (the “Amended Act”) was approved by the Cabinet and submitted to the Diet on March 4, was passed on June 3, and was promulgated on June 10, 2022. The effective date of the Amended Act is to be within 1 year from the promulgation, and thus the Amended Act is expected to come into effect in the first half of 2023.

This newsletter explains the Amended Act with a focus on (1) the clarification and introduction of the regulations on stablecoins (see [our newsletter of May 2022 \(in Japanese\)](#)) for (2) the tightening of regulations on prepaid payment instruments from the view point of AML/CFT).

1 Overview

The Amended Act is essentially based on the contents of the Report and mainly focuses on (1) the establishment of a definition of “Electronic Payment Instruments”, the goal of which is to define

¹ We issued a newsletter about this topic in Japanese. It can be found on our website (see below link). This newsletter is not a translation thereof.
https://www.amt-law.com/asset/pdf/bulletins2_pdf/220719_2.pdf

stablecoins²; (2) a statutory system on trust companies that issue stablecoins in the form of trust beneficial rights; (3) the determination of the scope of an “electronic payment instruments exchange service” and an “electronic payments handling service”, meaning an intermediary business for stablecoins and existing electronic money; and (4) the establishment of registration procedures and code of conducts imposed on Electronic Payment Instruments Exchange Service Providers and Electronic Payments Handling Service Providers.

While the definition of electronic payment instruments and the code of conducts seem to be mostly based on the existing regulations under the Payment Services Act pertaining to crypto-assets and crypto-asset exchange service, due attention should be paid to the differences in the regulations arising from the fact that electronic payment instruments are currency-denominated assets.

Generally, Japanese financial regulatory systems have a three-tiered structure consisting of legislation, subordinate legislation (which consists of government ordinances and cabinet office ordinances), and supervisory policies and administrative guidelines (“Supervisory Policies”) which often function as de facto rules despite their original function as indicators of the viewpoints of the competent administrative authorities. The current legislation concerning stablecoins is also expected to follow this structure, but only the top-level legislation has been disclosed as a draft at this point,³ thus the overall picture of the regulatory system has not been finalized yet.

Therefore, it is necessary to pay close attention to the progress of the development of subordinate legislation and Supervisory Policies.

2 Definition of “Electronic Payment Instruments”

While the Report uses the concept of “electronic payment instruments” to encompass digital-money type stablecoins and existing electronic money (issued by banks or fund transfer service providers), the Amended Act newly defines “Electronic Payment Instruments” to refer only to digital-money type stablecoins as follows:

Article 2, Paragraph 5 of the Amended Payment Services Act

The term “Electronic Payment Instruments” used herein means:

(i) property value (limited to currency-denominated assets which are recorded on an electronic device or any other object by electronic means, and excluding securities, electronically recorded monetary claims specified in Article 2, Paragraph 1 of the Electronically Recorded Monetary Claims Act (Act No.102 of 2007), prepaid payment instruments and other instruments specified in cabinet office ordinances as being equivalent to the foregoing items (except those specified in the cabinet office ordinances taking into account their transferability and other factors) which can be used in relation to

² In the Report, stablecoins are generally divided into (i) digital-money type stablecoins (i.e., those issued at a price linked to the value of a legal currency (e.g., 1 coin = 1 yen) and promised to be redeemed in the same amount as its issue price (and those equivalent thereto)), and (ii) crypto-assets type stablecoins (i.e., those that aim to stabilize value by algorithms). Among these, the latter are basically classified as “crypto-assets” under Japanese laws and regulations, and are regulated in accordance with the existing legislation on crypto-assets; hence, no special arrangement is made for these latter in the Amended Act. Thus, “stablecoins” in this newsletter basically refers to digital-money type stablecoins.

³ The Amended Act is made available on the following website: <https://www.fsa.go.jp/common/diet/index.html> (available only in Japanese).

unspecified persons for the purpose of paying consideration for the purchase or leasing of goods or the receipt of provision of services, and can also be purchased from and sold to unspecified persons acting as counterparties, and which can be transferred by means of an electronic data processing system (except those that fall under item (iii));

(ii) property value which can be mutually exchanged with what is set forth in the preceding item with unspecified persons acting as counterparties, and which can be transferred by means of an electronic data processing system (except those that fall under the next item);

(iii) specified trust beneficial interests; and

(iv) those specified by cabinet office ordinances as being equivalent to those listed in the preceding three items.

(1) Electronic Payment Instrument I

Electronic Payment Instruments specified in item (i) (“Electronic Payment Instrument I”) are currency-denominated assets that are recorded and transferred electronically and that can be used for paying consideration to unspecified persons, and also can be purchased from or sold to unspecified persons. Currency-denominated assets mean assets which are denominated in a legal currency, or for which performance of obligations, refunds, or anything equivalent thereto is supposed to be made in Japanese currency or a foreign currency (Article 2, Paragraph 7 of the Amended Payment Services Act). The definition of Electronic Payment Instrument I is similar to that of crypto-assets (Article 2, Paragraph 14, Item (i) of the Amended Payment Services Act) except for the fact that crypto-assets do not include currency-denominated assets whereas Electronic Payment Instruments are in principle limited to currency-denominated assets. This means that USDT (tether) and USDC (USD coin), for example, meet the definition in general (please note that, as described in 3-4 below, meeting the definition does not necessarily mean that it is practically possible to circulate them in Japan). For the avoidance of doubt, as defined above, Electronic Payment Instrument I is not limited to tokens using blockchain (distributed ledger technology), and even when managed on a specific server, any property value could fall under the category of Electronic Payment Instruments as long as it meets the definition above.

In the Report, the term “electronic payment instrument” was used as a concept to encompass both digital-money type stablecoins and existing electronic money (issued by banks or fund transfer service providers). However, under the relevant laws, the existing electronic money is classified as deposit claims (if the electronic money is issued by banks) or claims pertaining to outstanding obligations in the process of a fund transfer (i.e., claims against fund transfer service provider) (if the electronic money is issued by fund transfer service providers) and, in practice, such transfer is made in a form such that banks and fund transfer service providers create and extinguish claims against banks or fund transfer service providers in the process of a fund transfer in response to a transfer request from a customer, and not made in a form of purchase and sale of such claims. Based on the preceding, it is considered that existing electronic money does not meet the requirements of Electronic Payment Instrument I in that it “can also be purchased from and sold to unspecified persons acting as counterparties”. As a result,

“Electronic Payment Instruments” do not encompass existing electronic money, and are a narrower concept than “electronic payment instruments” used in the Report.⁴

Furthermore, the underlined phrase in parentheses in the definition excerpted above, “except those specified in the cabinet office ordinances taking into account their transferability and other factors”, provides that, exceptionally, certain securities, electronically recorded monetary claims, prepaid payment instruments, etc. can be classified as Electronic Payment Instruments while securities, electronically recorded monetary claims, prepaid payment instruments, etc. are generally not classified as Electronic Payment Instruments (a double negative provision to “exclude” from “exceptions”). In light of the content of the Report, it is expected that among prepaid payment instruments, at least “those issued by the issuer in a permissionless distributed ledger with specifications that can be distributed to unspecified persons and used as a means of remittance and settlement to unspecified persons” (i.e., not limited to the settlement to the issuer or member stores) would be included in such exceptions specified in the cabinet office ordinances.

(2) Electronic Payment Instrument II

The Electronic Payment Instruments specified in the item (ii) (“Electronic Payment Instrument II”) are almost identical to the crypto-assets II specified in Article 2, Paragraph 5, Item (ii) of the current Payment Services Act. However, since existing well-known stablecoins meet the definition of Electronic Payment Instrument I, none of them is likely to be classified as Electronic Payment Instrument II. Rather, it seems that Electronic Payment Instrument II is introduced in conjunction with Electronic Payment Instrument I from the viewpoint of the prevention of circumvention of regulations.

(3) Electronic Payment Instrument III (specified trust beneficial rights)

The Electronic Payment Instruments specified in item (iii) (“Electronic Payment Instrument III”) is defined as a “specified trust beneficial right”, which is separately defined in Article 2, Paragraph 9 of the Amended Payment Services Act as trust beneficial rights that are electronically recorded and transferred and meet certain requirements, for example, that a trustee manage the entire amount of money constituting the trust property by bank deposits. This is considered to take into account the scheme that uses trust beneficial rights (found at the right side of the excerpted diagram below) among the schemes of “electronic payment instruments” exemplified in the Report and under which the customers’ right to claim redemption against issuers are clearly secured, and under which the customers’ rights to claim redemption are properly protected in the event of the default of issuers or intermediaries.

The issuance of stablecoins that use trust beneficial rights may also be classified as a fund transfer because they follow a scheme that enables a fund transfer between remitters and recipients. Thus, in order to enable trust companies to issue stablecoins that use trust beneficial rights, the Amended Act

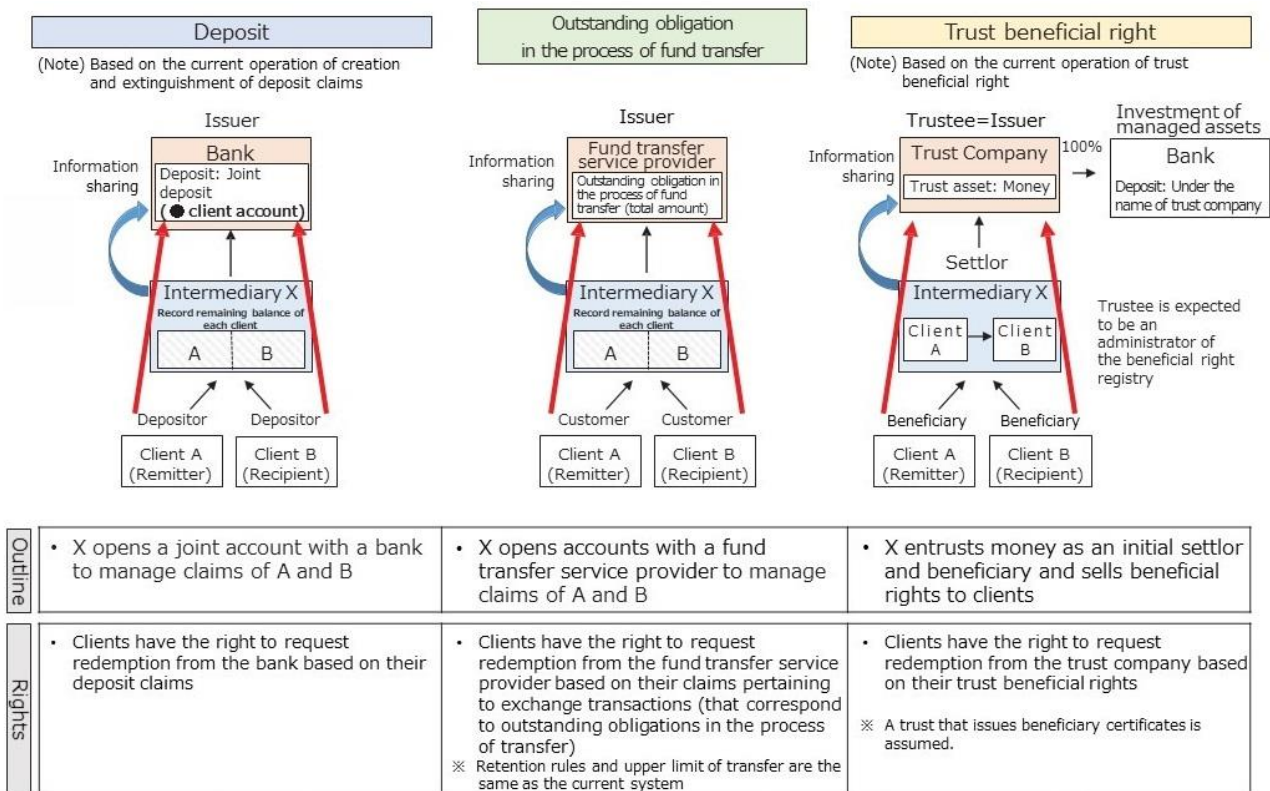
⁴ Provided, however, that intermediaries of such existing electronic money also fall under “electronic payments handling services” under the Banking Act or “electronic payment instruments exchange services” under the Payment Services Act, and need a license as an intermediary. This means that, in the diagram on page 5 of this newsletter, in relation to the sections titled “Deposit” and “Outstanding obligations in the process of fund transfer” (left and center) among the “Electronic Payment Instruments” schemes that are assumed in the Report and permitted under the Japanese legislation, acts performed by intermediaries are classified as “electronic payments handling services” or “electronic payment instruments exchange services” while “Deposits” and “Outstanding obligations in the process of fund transfer” handled under the scheme are not classified as “Electronic Payment Instruments.”

newly defines “specified trust fund transfer”, which means fund transfers by a means of issuing specified trust beneficial rights (Article 2, Paragraph 28 of the Amended Payment Services Act), and permits trust companies that issue specified trust beneficial rights (defined as “specified trust companies” under Article 2, Paragraph 27 of the Amended Payment Services Act) to conduct only “specified trust fund transfers” among fund transfers (Article 37-2 of the Amended Payment Services Act).

In addition, banks that are permitted to engage in a trust business with a license under the Act on Engagement in Trust Business Activities by Financial Institutions such as trust banks, are not included in the definition of a “specified trust company” because they can naturally engage in fund transfer transactions as banking businesses (that is, such banks will be able to issue stablecoins that use specified trust beneficial rights without including them in a “specified trust company”).

(4) Electronic Payment Instrument IV

Under Article 2, Paragraph 5, Item (iv) of the Amended Payment Services Act, “those specified by cabinet office ordinances as being equivalent to those listed in the preceding three items” are also classified as Electronic Payment Instruments (“Electronic Payment Instrument IV”). The details of Electronic Payment Instrument IV are not clear at present. However, considering that “Electronic Payment Instruments (excluding currency-denominated assets)” is excluded in the definition of crypto-assets under Article 2, Paragraph 14 of said Act, it can be said that it indicates a possibility that Electronic Payment Instruments that are not currency-denominated assets (i.e. certain crypto-asset type stablecoins) will be specified as Electronic Payment Instrument IV in the future.



※ Black arrows show a flow of money when clients A and B obtain digital money from the issuer and red arrows show rights under the substantive law.
 ※ Roles of parties and relationships of rights in the diagram are examples in possible cases, and they may vary in each case.

(Excerpted from page 12 of the Secretariat Briefing Material of the Third Payment Services Working Group of the Financial System Council (Digitalization of the Financial Services Agency)).

3 “Electronic Payment Instruments Exchange Service” and “Electronic Payments Handling Service”

3-1 Correspondence between definitions in the Report and the Amended Act

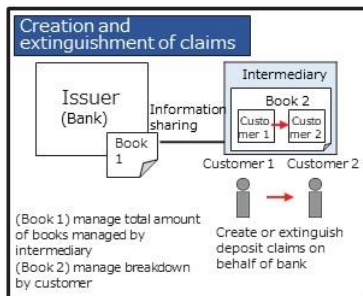
The Report indicated its intention to impose new business regulations on intermediaries of electronic payment instruments, and identified the following three acts subject to the regulations:

- Act of creating or extinguishing deposit claims on behalf of a bank;
- Act of creating or extinguishing claims pertaining to outstanding obligations in the process of a fund transfer on behalf of a fund transfer service provider; and
- The sale, purchase and exchange of, and custody and brokerage for the sale, purchase and exchange of, electronic payment instruments for trust beneficiary rights with a specification that the trustee manage the entire amount of money constituting the trust property by bank deposits.

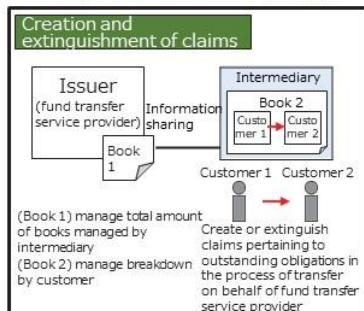
The foregoing was illustrated in the following diagram which is presented on page 17 of the FSA's briefing material of the third session of the Payment Services Working Group of the Financial System Council. Note that (a), (b) and (c) above correspond to (1), (2) and (3) below, respectively.

Regulated act of intermediaries (image)

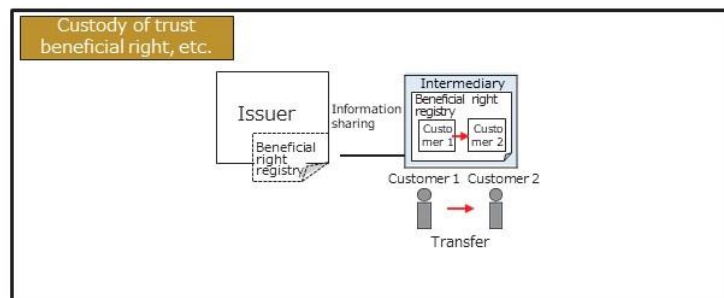
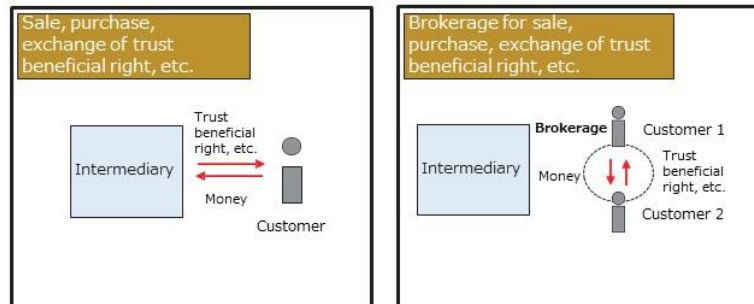
(1) Scheme that uses deposit (image)



(2) Scheme that uses outstanding obligations in the process of transfer (image)



(3) Scheme that uses trust beneficial right (image)^(Note)



(Note) Under the scheme of trust beneficial right, etc., it is assumed that the beneficial right registry is managed not by the intermediary but by the trustee of the trust.

(Excerpted from page 17 of the FSA's briefing material of the third session of the Payment Services Working Group of the Financial System Council).

As an equivalent to these, the Amended Act has established a definition of an "Electronic Payment Instruments Exchange Service" in the Amended Payment Services Act and a definition of an "Electronic Payments Handling Service" in the Amended Banking Act⁵ as follows:

Article 2, Paragraph 10 of the Amended Payment Services Act

The term "Electronic Payment Instruments Exchange Service" as used herein means engaging in any of the following acts in the course of trade. The term "Exchange of Electronic Payment Instruments" means the acts specified in Item (i) or (ii), and the term "Management of Electronic Payment Instruments" means the acts specified in Item (iii).

- (i) the sale and purchase of an electronic payment instrument, or the exchange thereof with another electronic payment instrument;
- (ii) serving as intermediary, brokerage, or agency for the acts specified in the preceding item;
- (iii) the act of managing electronic payment instruments for others (except those specified by cabinet office ordinances as not giving rise to a risk of insufficient protection for customers, taking into account their details and other factors); or
- (iv) the act of making an agreement, under entrustment from a fund transfer service provider, with a customer (limited to those who have concluded a contract with the fund transfer service provider under which fund transfers are to be carried out on a continuous or recurring basis) on behalf of the fund transfer service provider, to carry out any of the following acts by a means that uses an electronic data processing system, and by increasing or reducing the amount of claims pertaining to obligations relating to fund transfers based on said agreement.
 - (a) transferring funds based on said contract and reducing the amount of the claim pertaining to the obligation relating to the fund transfer that is equivalent to the amount of said funds; or
 - (b) increasing the amount of the claim pertaining to the obligation relating to the fund transfer that is equivalent to the amount of funds received by the fund transfer.

Article 2, Paragraph 17 of the Amended Banking Act

The term "Electronic Payments Handling Service" as used herein means a business that carries out the following acts, and the term "Electronic Payments Related Deposit Intermediary Service" means the act specified in Item (ii):

- (i) the act of making an agreement, under entrustment from a bank, with a depositor who has opened a deposit account with the bank on behalf of the bank to carry out any of the following acts by a means that use an electronic data processing system, and of increasing or reducing the amount of claims under a deposit contract ("Deposit Claim" in this item) based on said agreement:

⁵ The Amended Shinkin Bank Act and the "Act on Financial Businesses by Cooperatives" which establishes legislation concerning credit unions, also have systems equivalent to an electronic payments handling service.

- (a) transferring funds pertaining to the said account and reducing an amount of Deposit Claims that is equivalent to the amount of said funds; or
- (b) increasing an amount of Deposit Claims that is equivalent to the amount of funds received by the fund transfer;
- (ii) acting as an intermediary for the conclusion of a contract for acceptance of deposits on behalf of the bank referred to in the preceding item (“Entrusting Bank”) in connection with the act in the same item that is performed.

First of all, the acts in Items (i) through (iii) of Article 2, Paragraph 10 of the Amended Payment Services Act are the sale, purchase and exchange (Item (i)), serving as intermediary, brokerage or agency providers for the sale, purchase and exchange (Item (ii)), and custody (Item (iii)) of Electronic Payment Instruments, all of which correspond to the acts described in (c) above. Provided, however, that not only the handling of specified trust beneficial rights as assumed in 2(3) above, but also an intermediary’s handling of overseas issued stablecoins is classified as this type of act and, thus, will require a license as an Electronic Payment Instruments Exchange Service Provider.

Secondly, the act specified in Article 2, Paragraph 10, Item (iv) of the Amended Payment Services Act corresponds to the act described in (b) above because it is described as an act of an Electronic Payment Instruments Exchange Service Provider to agree with customers to transfer funds between their accounts on the assumption that it is authorized to act as an agent based on the contractual relationship with a fund transfer service provider, and to generate the resulting effect of increasing (in relation to the recipient, Item (iv) (b)) and decreasing (in relation to the remitter, Item (iv) (a)) outstanding obligations in the process of a fund transfer in relation to the fund transfer service provider based on such authority to act as an agent.

Furthermore, with the exception of Item (ii) mentioned in 3-2 below, the acts described in Article 2, Paragraph 17 of the Amended Banking Act are basically equivalent to Article 2, Paragraph 10, Item (iv) of the Amended Payment Services Act, namely, whereby an Electronic Payments Handling Service Provider agrees with customers to transfer funds to other customers on the assumption that it is authorized to act as an agent based on the contractual relationship with a bank, and it generates the resulting effect of increasing (in relation to the recipient, Article 2, Paragraph 17, Item (i)(b) of the Amended Banking Act) and decreasing (in relation to the remitter, Article 2, Paragraph 17, Item (i)(a) of the Amended Banking Act) deposit claims in relation to the bank based on such authority to act as an agent.

As described above, the Amended Banking Act provides for the concept of an “Electronic Payments Handling Service” separately from “Electronic Payment Instruments Exchange Service” under the Amended Payment Services Act, and there is no provision to authorize a person who has obtained a license for either of them to engage in the other service without obtaining a license. Therefore, it seems that it is required to obtain both licenses in order to engage in both services.

3-2 Relationship between Electronic Payments Handling Service and Bank Agency Service or Electronic Payment Intermediate Service

When considering business models for stablecoins, it may be convenient to understand how the Electronic Payments Handling Service is positioned in relation to the existing intermediary businesses (the bank agency service and the electronic payment intermediate service) under the Amended Banking Act.

First, with regard to the relation with a bank agency service, Article 52-60-3 of the Amended Banking Act provides that a person registered as an Electronic Payments Handling Service Provider may engage in an Electronic Payments Handling Service “notwithstanding the provision of Article 52-36, Paragraph 1 of the Amended Banking Act (which provision requires that a license from an authority be granted in order to provide a bank agency service)”. This indicates that an Electronic Payments Handling Service encompasses acts that fall under the category of a bank agency service, and is positioned as a special provision for a bank agency service.

It is presumed that this derives from the facts that the acts which constitute an electronic payment handling service falls within the definition of a bank agency service, as follows:

- ✓ An act specified in Article 2, Paragraph 17, Item (i)(a) of the Amended Banking Act includes an act of accepting instructions from a depositor regarding a fund transfer based on the authority to act as an agent granted by a bank (as a precondition for the act to reduce depositor’s deposit claims), and such act corresponds to “agency for the conclusion of a contract for fund transfers”, which is one of the acts constituting the definition of a bank agency service; and
- ✓ “an act as an intermediary for the conclusion of a contract for acceptance of deposits” (as a precondition for transferring funds between customers and generating the resulting effect of increasing or decreasing deposit claims of each customer based on the authority to act as an agent granted by a bank) in Article 2, Paragraph 17, Item (ii) of the Amended Banking Act corresponds to “acting as agent or intermediary when entering into a contract for the acceptance of deposits or installment savings, etc.” (Article 2, Paragraph 14, Item (i) of the Current Banking Act), which is one of the acts constituting a bank agency service.

Secondly, with regard to how this relates to an electronic payment intermediate service, Article 52-60-8, Paragraph 1 of the Amended Banking Act provides that Electronic Payments Handling Service Providers may engage in an electronic payment intermediate service to the extent necessary for conducting an Electronic Payments Handling Service. It is considered that this does not necessarily mean that, unlike in the case of a bank agency service, the definition of an Electronic Payments Handling Service naturally includes acts that fall under the definition of an electronic payment intermediate service. It is presumed that such provision was established since a person who engages in an Electronic Payments Handling

Service often needs to engage in acts that fall under the definition of an electronic payment intermediate service as well, for example, when electronic money issued by a bank serves the purpose of sending money to bank accounts at other banks.

3-3 Code of Conducts

Electronic Payment Instruments Exchange Service Providers are subject to the following code of conducts in general:

Information security management	Electronic Payment Instruments Exchange Service Providers must take measures for secure management of information (Article 62-10 of the Amended Payment Services Act). The details are delegated to cabinet office ordinances.
Guidance to subcontractors	When an Electronic Payment Instruments Exchange Service Provider delegates to a third party any part of its Electronic Payment Instruments Exchange Service, it must take necessary measures to ensure the proper and reliable performance of the service (Article 62-11 of the Amended Payment Services Act). The details are delegated to cabinet office ordinances.
Measures to Protect Customers	Electronic Payment Instruments Exchange Service Providers must provide explanations to prevent misidentification with an issuer of stablecoins, provide information on fees and other contract details, and take other necessary measures to protect customers and ensure the proper and reliable performance of service (Article 62-12 of the Amended Payment Services Act). The details are delegated to cabinet office ordinances.
<u>Prohibition of Deposit of Property</u>	Electronic Payment Instruments Exchange Service Providers are in principle prohibited from accepting deposits of money or other property from customers in relation to the Electronic Payment Instruments Exchange Service (Article 62-13 of the Amended Payment Services Act). A proviso to said article provides for an exception, namely, “cases specified by a cabinet office ordinance as those in which there exists no risk of resulting in insufficient customer protection”.
Obligation to Segregate Electronic Payment Instruments of Customers	Electronic Payment Instruments Exchange Service Providers must manage electronic payment instruments of customers separately from their own electronic payment instruments, and must periodically undergo an audit by a certified public accountant or an audit firm with regard to the status of the management (Article 62-14 of the Amended

	Payment Services Act). The details are delegated to cabinet office ordinances.
<u>Obligation to Conclude a Contract with Issuers</u>	Electronic Payment Instruments Exchange Service Providers must conclude with an Issuer a contract for the electronic payment instruments service that provides for the sharing of liability for damages, in the event that a customer incurs damages, and must conduct the electronic payment instruments service for said issuer in accordance with said contract (Article 62-15 of the Amended Payment Services Act). Matters to be provided for in the contract other than the sharing of liability for damages are delegated to cabinet office ordinances.
Obligation to Conclude a Contract with a Dispute Resolution Organization	Electronic Payment Instruments Exchange Service Providers are required to establish alternative dispute resolution procedures equivalent to those of fund transfer service providers and crypto-asset exchange service providers under the Payment Services Act (Article 62-16 of the Amended Payment Services Act). The details of complaint processing procedures and dispute resolution procedures are delegated to cabinet office ordinances.
<u>Application of the Financial Instruments and Exchange Act</u>	Provisions of the Financial Instruments and Exchange Act shall apply mutatis mutandis to Electronic Payment Instruments Exchange Service Providers that engage in an electronic payment instruments-related service pertaining to Electronic Payment Instruments specified by cabinet office ordinances inasmuch as the price of said instruments may fluctuate due to a fluctuation in the value of currencies or other indicators (Article 62-17 of the Amended Payment Services Act).
Obligation for Confirmation at the time of Transaction	As a result of the addition of Electronic Payment Instruments Exchange Service Providers to the category of specified business operators (Article 2, Paragraph 2, Item (31-2) of the Amended Act on Prevention of Transfer of Criminal Proceeds (the “Anti-Criminal Proceeds Act”)), Electronic Payment Instruments Exchange Service Providers become subject to various obligations imposed on specified business operators under the Anti-Criminal Proceeds Act, including the KYC of their clients at the time of a transaction and to report on suspicious transactions.
<u>Travel Rules</u>	As obligations specific to Electronic Payment Instruments Exchange Service Providers rather than obligations of specified business operators in general, the Anti-Criminal Proceeds Act imposes (1) measures to check the status of counterparties, including confirmation

	<p>at the time of transaction, in the case of repeated and continuous transfers of Electronic Payment Instruments with a person who exchanges or manages Electronic Payment Instruments in a foreign country (Article 10-2 of the Amended Anti-Criminal Proceeds Act), and (2) so-called travel rules (e.g. the obligation to notify the receiving Electronic Payment Instruments Exchange Service Provider of client information at the time of a transfer of Electronic Payment Instruments) (Article 10-3 of the Amended Anti-Criminal Proceeds Act). Provided, however, that these obligations shall not apply to Electronic Payment Instruments that are specified trust beneficial rights.</p>
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The code of conducts on Electronic Payment Instruments Exchange Service Providers seem to use the code of conducts imposed on crypto-asset exchange service operators as a reference standard, except for the passages in boldface listed above: (1) prohibition of deposit of property, (2) obligation to conclude a contract with issuers, (3) application of the Financial Instruments and Exchange Act, and (4) travel rules which are obligations specific to Electronic Payment Instruments Exchange Service Providers and not imposed on crypto-asset exchange service providers..

Of such obligations, item (1) above, namely, the prohibition of deposits of property, will in principle prohibit a business model in which an Electronic Payment Instruments Exchange Service Provider temporarily receives money from clients and thereupon purchases stablecoins (Electronic Payment Instruments) using that money, as conducted on current crypto-asset exchanges (unless such business model falls under the exceptions that will be specified in a cabinet office ordinance in the future).⁶ Since the existing major digital-money type stablecoins are all of the permission-less type and do not generally expect the conclusion of a contract between issuers and intermediaries, item (2) above, namely, the obligation to conclude a contract with issuers, may impede the circulation of these stablecoins in Japan (see also 3-4 below).

It should be noted that the code of conducts on electronic payments handling service Providers provided for in the Amended Banking Act and the Amended Anti-Criminal Proceeds Act can be, in general, considered to be the same as the regulations imposed on Electronic Payment Instruments Exchange Service Providers as described above, except for minor differences such as differences resulting from variations in their underlying laws (the Amended Banking Act and the Amended Anti-Criminal Proceeds Act), and except that furthermore no reference to the aforementioned travel rules to Electronic Payments Handling Service Providers is made.

⁶ In this regard, the Report explains that because Electronic Payment Instruments themselves are a means of payment and not an investment target, intermediaries (an electronic payment instruments exchange service provider) are not normally expected to manage customers' money in order to enable customers to conduct speculative trading (footnote 101). On this point, however, service providers have pointed out that the deposit of money is practically indispensable for their business.

3-4 Implementation of business models other than those deemed typical in the Report

As discussed in 3-1 above, the Report proposes the following legal structures for the issuance and circulation of stablecoins in Japan. In response to such legal structures, the Amended Act defines three “Electronic Payment Instruments Exchange Service” and “Electronic Payments Handling Service” structures:

- (a) Based on the current practice of banks regarding the creation and extinguishment of deposit claims at the time of an account transfer, a mechanism is implemented whereby an intermediary has been granted the authority by a bank to manage each individual customer’s deposit balance and transfer such deposit balance between customers (the bank, as an issuer, only manages the total amount of the deposit);
- (b) A mechanism is implemented under which an intermediary has been granted the authority by a fund transfer service provider to manage and transfer each user’s outstanding claims (the fund transfer service provider, as an issuer, only manages the total amount of the outstanding claims); or
- (c) A mechanism is implemented that applies the applicable Japanese trust legislation where an intermediary sells and transfers trust beneficiary rights in a beneficiary certificate issuing trust, the trust assets of which are managed in the form of deposits with banks.

What is of interest is whether the Amended Act permits intermediation of stablecoins through other business models.

Specifically, the following business model, which is similar to that of overseas cryptocurrency exchanges, seems to be of high practical right:

- Intermediaries handle permission-less stablecoins issued by foreign issuers that do not follow any of the above three legal structures (e.g. USDC, Tether) (without contractual relationships with foreign issuers) (“Overseas Issued Stablecoin”).

First of all, in relation to “Electronic Payment Instruments Exchange Service”, the definition of “Electronic Payment Instruments” which are subject to the following types of conduct in Article 2, Paragraph 10, Items (i) to (iii) of the Amended Payment Services Act, is not necessarily limited to specified trust beneficial rights. Hence, the following acts in relation to Overseas Issued Stablecoins will fall under the definition of an Electronic Payment Instruments Exchange Service as well.

- (i) Sale and purchase of Electronic Payment Instruments or exchange of Electronic Payment Instruments with another Electronic Payment Instrument
- (ii) Intermediary, brokerage or agency for acts specified in the preceding item
- (iii) Management of Electronic Payment Instruments for other persons (except for those specified in cabinet office ordinances as not giving rise to a risk of insufficient protection of customers, taking into account the details)

Secondly, in relation to code of conducts, since the Report indicates the following prescriptions (hurdles), the authority was considered to be reluctant to allow the business model described above⁷:

- (a) For permission-less stablecoins, issuers and intermediaries are required to take measures to prevent a transfer of such stablecoins to customers whose identity has not been verified;
- (b) Intermediaries are only allowed to handle stablecoins issued overseas with respect to which assets are protected in Japan;
- (c) Intermediaries are required to conclude contracts with issuers with respect to stablecoins they handle;
- (d) In principle, intermediaries are prohibited from receiving deposits of money from customers;
- (e) It is necessary to establish clear rules (procedures, timing) on a transfer of rights in stablecoins.

However, with regard to (a) to (e), it appears that setting strict legal parameters has been avoided, as there is room for exceptions to be granted in subordinate legislation (or supervisory policies/guidelines), or for specific regulations to be delegated to address them.

Specifically, the Amended Act does not provide for specific rules corresponding to (a), (b) and (e). However, in light of the current legislation concerning crypto-asset exchange service providers, it appears that these rules concerning the types of Electronic Payment Instruments that Electronic Payment Instruments Exchange Service Providers can handle could be dealt with, as “necessary measures to protect customers and ensure the proper and reliable performance of services” (Article 62-12 of the Amended Payment Services Act) in the cabinet office ordinances that will be established pursuant to said Article.

In this context, the “Study Group on Digital and Decentralized Finance” of the Financial Services Agency, which is in progress as of the time of writing this newsletter (as of June 28, 2022), is discussing issues related to (a), (b) and (e), and it is expected that the content of the subordinate legislation will be in line with the discussions of the Study Group. Therefore, close attention should be paid to the discussions.⁸

In relation to (c), Article 62-15, Item (i) of the Amended Payment Services Act clearly imposes an obligation to conclude a contract with an issuer on Electronic Payment Instruments Exchange Service Providers. However, the main clause of said article sets forth the following exception in parenthesis “except for those specified by cabinet office ordinances as not giving rise to a risk of insufficient protection of customers of the Electronic Payment Instruments Exchange Service or of hindering the proper and reliable performance of the Electronic Payment Instruments Exchange Service”, in which case, there is still room for conducting an Electronic Payment Instruments Exchange Service without concluding a contract with an issuer.

⁷ See 1-2-5, 1-3 of [the last newsletter](#)

⁸ As of the time of writing this newsletter, the authority has proposed with regard to the issue (b), for example, the direction of the institutional design that “whether it could be standard that, for example, Electronic Payment Instruments Exchange Service Providers take measures to mitigate risks such as setting a transfer ceiling, as well as promise to purchase electronic payment instruments at their face value in the event of bankruptcy of an issuer or a decline in the price of the electronic payment instruments, and secure necessary funds to ensure the reliable performance of such purchase” as a condition for circulation of overseas issued electronic payment instruments in Japan.

With regard to (d), while it is considered necessary for Electronic Payment Instruments Exchange Service Providers to receive deposits of money from customers in order to realize a form of use similar to that of stablecoins overseas, this also has room for an exception to be specified in cabinet office ordinances because Article 62-13 of the Amended Payment Services Act which prohibits Electronic Payment Instruments Exchange Service Providers from deposit of money sets forth the proviso, “provided, however, that this shall not apply to the cases specified by cabinet office ordinances as not giving rise to a risk of insufficient protection of customers”.

As discussed above, whether the handling of any given existing well-known Overseas Issued Stablecoins will be permitted, in effect, will depend on upcoming subordinate legislation, supervisory policies and guidelines, and attention should be paid to the progress made in the discussions being held on these matters.

- End -

- 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 as follows:

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