



ICLG

The International Comparative Legal Guide to:

Fintech 2017

1st Edition

A practical cross-border insight into Fintech law

A&L Goodbody
Anderson Mōri & Tomotsune
Anjarwalla & Khanna Advocates
BA-HR
Bär & Karrer Ltd.
BonelliErede
Bredin Prat
De Brauw Blackstone Westbroek
ENS Africa
Galicia Abogados, S.C.
Gilbert + Tobin
Gorrißen Federspiel
GVZH Advocates
Haiwen & Partners
Hengeler Mueller Partnerschaft von Rechtsanwälten mbB
Herzog Fox & Neeman
Hiswara Bunjamin & Tandjung (in association with Herbert Smith Freehills LLP)

Kim & Chang
Lee and Li, Attorneys-at-Law
Mannheimer Swartling
Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados
McMillan LLP
Roschier, Attorneys Ltd.
Shearman & Sterling LLP
Shearn Delamore & Co.
Slaughter and May
SRP-Legal
Trilegal
Udo Udoma & Belo-Osagie
Uría Menéndez
Uría Menéndez – Proença de Carvalho
WKB Wierciński, Kwieciński, Baehr



global legal group

Contributing Editors
Rob Sumroy and Ben Kingsley, Slaughter and May

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Sales Support Manager
Paul Mochalski

Editor
Caroline Collingwood

Senior Editors
Suzie Levy, Rachel Williams

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
May 2017

Copyright © 2017
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-49-9
ISSN 2399-9578

Strategic Partners



General Chapter:

1	Artificial Intelligence in Fintech – Rob Sumroy & Ben Kingsley, Slaughter and May	1
---	--	---

Country Question and Answer Chapters:

2	Australia	Gilbert + Tobin: Peter Reeves	6
3	Brazil	Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga Advogados: Renato Schermann Ximenes de Melo & Fabio Ferreira Kujawski	12
4	Canada	McMillan LLP: Pat Forgione & Jeffrey Nagashima	17
5	China	Haiwen & Partners: Jinen Zhang & Xixiang Lin	23
6	Denmark	Gorrissen Federspiel: Morten Nybom Bethe & Tue Goldschmieding	29
7	Finland	Roschier, Attorneys Ltd.: Niklas Östman & Sonja Heiskala	35
8	France	Bredin Prat: Mathieu Françon & Bena Mara	41
9	Germany	Hengeler Mueller Partnerschaft von Rechtsanwälten mbB: Dr. Christian Schmies & Dr. Susan Kempe-Müller	46
10	Hong Kong	Slaughter and May: Benita Yu & Jason Webber	52
11	India	Trilegal: Kosturi Ghosh & Preethi Srinivas	59
12	Indonesia	Hiswara Bunjamin & Tandjung (in association with Herbert Smith Freehills LLP): David Dawborn & Vik Tang	65
13	Ireland	A&L Goodbody: Claire Morrissey & Peter Walker	71
14	Israel	Herzog Fox & Neeman: Elad Wieder & Ariel Yosefi	78
15	Italy	BonelliErede: Federico Vezzani & Tommaso Faelli	85
16	Japan	Anderson Mōri & Tomotsune: Taro Awataguchi & Ken Kawai	90
17	Kenya	Anjarwalla & Khanna Advocates: Dominic Rebelo & Sonal Sejpal	96
18	Korea	Kim & Chang: Jung Min Lee & Samuel Yim	101
19	Malaysia	Shearn Delamore & Co.: Timothy Siaw & Elyse Diong	107
20	Malta	GVZH Advocates: Dr. Andrew J. Zammit & Dr. Michael Grech	112
21	Mexico	Galicia Abogados, S.C.: Mariana Islas & Claudio Kurc	117
22	Netherlands	De Brauw Blackstone Westbroek: Bart van Reeken & Björn Schep	122
23	Nigeria	Udo Udoma & Belo-Osagie: Yinka Edu & Tolulope Osindero	128
24	Norway	BA-HR: Markus Nilssen & Sondre Graasvoll	134
25	Poland	WKB Wierciński, Kwieciński, Baehr: Marcin Smolarek & Agnieszka Wiercińska-Krużewska	140
26	Portugal	Uría Menéndez – Proença de Carvalho: Pedro Ferreira Malaquias & Hélder Frias	146
27	South Africa	ENSAfrica: Prof. Angela Itzikowitz & Era Gunning	153
28	Spain	Uría Menéndez: Leticia López-Lapuente & Livia Solans	159
29	Sweden	Mannheimer Swartling: Martin Pekkari & Anders Bergsten	166
30	Switzerland	Bär & Karrer Ltd.: Eric Stupp & Peter Ch. Hsu	172
31	Taiwan	Lee and Li, Attorneys-at-Law: Robin Chang & Benjamin K. J. Li	179
32	Turkey	SRP-Legal: Dr. Çiğdem Ayözger	184
33	United Kingdom	Slaughter and May: Rob Sumroy & Ben Kingsley	189
34	USA	Shearman & Sterling LLP: Reena Agrawal Sahni & Sylvia Favretto	195

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

EDITORIAL

Welcome to the first edition of *The International Comparative Legal Guide to Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

One general chapter. This chapter provides an overview of Artificial Intelligence in Fintech.

Country question and answer chapters. These provide a broad overview of common issues in fintech in 33 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Japan

Taro Awataguchi



Ken Kawai



Anderson Mōri & Tomotsune

1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Although Japan is not a global leader in fintech innovation, nevertheless, recent government reforms supported by initiatives by the financial industry are driving the establishment of fintech companies to progress at a faster pace and compete with the advanced countries. According to Accenture, the investment in this sector in Japan grew, by 230 percent from the previous year, to approximately USD 154 million in 2016. Among these, the investment in payment services including those related to cryptocurrency accounted for 40 percent and the investment in wealth and asset management services including robo-adviser gained ground. That being said, compared to fintech companies in other countries such as the United States, fintech ventures and startups in Japan are more likely to coordinate with traditional financial institutions rather than fight with them and disrupt existing financial services, partly because of the nature of Japanese society and the relative difficulties in procuring massive funding for fintech ventures in Japan. Notable sub-sectors are listed below.

- Money transfer:
Traditionally, only banks and certain other depository institutions handling deposits licensed under applicable laws (collectively, the “Banks”) were able to provide money transfer services. In April 2010, however, a part of such restriction was deregulated by the promulgation of the Payment Service Act (the “PSA”). Under the PSA, companies other than Banks are allowed to provide a service of money transfer not more than JPY one million if they are registered under the PSA. Since then, entrance into this sub-sector by non-banking companies has been steadily increasing.
- Electronic-money (“E-money”):
Prepaid-type E-money is very popular in Japan. Mobile wallets for E-money installed in the mobile phone have been used since 2004 in this country. Recent developments in this sub-sector include so-called biometric payment service. For instance, a fintech startup provides the service with which people can make payment at shops only by scanning their fingers on a small fingerprint sensor machine.
- Crypto-currency:
Although Japan experienced bankruptcy of the Mt. Gox, which is a Japanese company, trading volume of bitcoin and other

crypto-currencies in this country has been increasing rapidly and it is often reported that Japan is the second largest market for bitcoin trading in the world. Japan is becoming crypto-currency-friendly country not only for trading but for payment and settlement as well since consumption tax will basically become inapplicable to buying crypto-currencies effective from July 1, 2017. Nikkei, the leading business newspaper in Japan, reported recently that more than 260,000 shops are expected to adopt bitcoin payment by summer 2017.

- Cloud-Computing Accounting and Personal Wealth Management:
Sub-sectors that have gained much attention are the sectors of cloud-computing accounting and personal wealth management (“PFM”). The main function for these sub-sectors are accumulating and aggregating a user’s financial accounts data that are separately held by several financial institutions in which the user has its accounts.
- Asset management:
In this sub-sector, several fintech startups as well as traditional investment advisory/management companies provide investment advisory/management services based on the technology of artificial intelligence (the “Robo-advisers”).

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction?

There are, at present, no prohibitions or restrictions that are specific to fintech businesses in Japan.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

The methods of funding for new companies would vary depending upon the stages they are in – (i) seed stage, (ii) start-up stage, (iii) early growth stage, and (iv) sustained growth stage. In seed or start-up stage, the founder’s own savings and borrowings and/or capital injection by the founder’s family and/or friends are commonly utilised. Funding through bank loans tends to be difficult in these stages. Japan Finance Corporation and municipalities provide a certain lending systems to support start-ups up to a certain maximum amount. Angel investors would also provide equity capital. In early growth stage to sustained growth stage, funding by bank loans or venture capital will more likely be available. Crowd funding is also available in every stage.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

- The Japanese tax system provides the angel investors with the following tax incentives: (i) reduction of the income tax (the amount invested to the target company which have not made profits in three years from the establishment will be reduced from the gross income); or (ii) reduction of the capital gains from transfer of shares in the target company (the amount invested to the target company of less than 10 years old will be reduced from the capital gains).
- The research and development (“R&D”) tax incentive system has been adopted and often revised in Japan with the aim of maintaining and strengthening the R&D initiatives, which support Japan’s global competitiveness.
- Unlike some of the European countries, the patent box scheme (which allows companies to apply a lower rate of corporation tax to profits earned from patented inventions) has not been adopted in Japanese tax system, though the adoption has been continuously proposed by the Japanese industry.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

Tokyo Stock Exchange (“TSE”) operates five equity markets: (i) the First Section; (ii) the Second Section; (iii) Mothers; (iv) JASDAQ; and (v) Tokyo PRO Market. There are two types of requirements (“Listing Requirements”) by which the company will be examined to list its stock encompassed: “Formal Requirements” and “Eligibility Requirements”. The Formal Requirements include: (i) the number of shareholders as of the listing day; (ii) the number of tradable shares; (iii) the market capitalisation of tradable shares; (iv) the ratio of tradable shares to listed shares; (v) public offering; (vi) market capitalisation of listed shares; (vii) number of consecutive years of business operation, and so forth. The Eligibility Requirements include: (i) appropriateness of the disclosure of corporate information, risk information, etc.; (ii) soundness of corporate management; (iii) effectiveness of corporate governance and internal management system of an enterprise; (iv) reasonableness of the business plan; and (v) other matters deemed necessary by TSE from the viewpoint of the public interest or the protection of investors.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

There are many fintech start-ups aimed at exits such as IPO, though completion of the IPO is yet to be reported. In addition, given the deregulation of the Banking Act which enabled the bank holding company to make investment to fintech business companies upon a respective approval by the Financial Services Agency of Japan (“JFSA”), such investment may increase.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Apart from the regulations applicable to crypto-currency (the “Virtual Currency Regulations”), there is no specific regulatory

framework for fintech businesses, which are subject to the existing body of Japanese financial regulations. If the services provided by the fintech companies are subject to existing financial regulations, they are required to comply with these regulations including obtaining applicable authorisation (licence or registration). A firm (including an overseas firm) that wishes to undertake regulated activities in Japan is required to obtain applicable authorisation from Japanese financial regulators, the JFSA or one of the Local Financial Bureaus that is delegated a part of the authority from the JFSA. Please note that solicitation for using its services from abroad to residents in Japan is basically considered as undertaking its activities in Japan.

Money transfer services are regulated under Banking Act and acts applicable to other depository institutions, which requires those who wish to enter into this business to obtain a licence from the JFSA, provided that service of money transfer of not more than JPY one million can be provided if a firm obtains the registration of the “Funds Transfer Service Provider” under the PSA.

As with E-money, the issuer of E-money must comply with applicable rules under the PSA. If E-money can be used only for the payments to the issuer for its goods or services, the PSA does not require the issuer to get registration, provided that they have some reporting obligations. Meanwhile, if E-money can be used not only for the payments to the issuer for its goods or services but also for the payments to other entities that are designated by the issuer, then the issuer is required to obtain the registration of the “Issuer of Prepaid Payment Instruments” under the PSA.

Regulations on crypto-currency came into force on April 1, 2017. The amended PSA defines “Virtual Currency” and requires a firm that wishes to provide “Virtual Currency Exchange Services” to get registration of “Virtual Currency Exchange Service Providers”. The term “Virtual Currency Exchange Services” means any of the following acts carried out as a business: (i) sale/purchase of Virtual Currency or exchange for other Virtual Currency; (ii) intermediary, agency or delegation for the acts listed in (i) above; or (iii) management of users’ money or Virtual Currency in connection with its acts listed in (i) and (ii).

Please note that an online payment instrument can be considered either as a part of “Funds Transfer”, a “Prepaid Payment Instrument”, a “Virtual Currency” or something else. As the boundary of each definition is not easy to distinguish, a consultation of specialists is recommended if an entity wishes to undertake business related to online payments in Japan.

In March 2017, the bill to amend the Banking Act for regulating “Electronic Payment Intermediate Service Provider” and facilitating open API was submitted to the Diet in Japan. If the bill passes the Diet, this amended act will come into force within a period not exceeding one year from the day of promulgation. An intermediary between financial institutions and customers, such as an entity engaged in the communication of payment instructions to Banks through IT based on the entrustment from its customers or an entity providing its customers information of their financial accounts held by Banks through IT may fall under the definition of Electronic Payment Intermediate Service Provider.

3.2 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested?

Yes. Financial regulators and policy-makers in Japan are receptive to fintech innovation and technology-driven new entrants in to the regulated financial services markets.

The Financial System Council (the “FSC”), the advisory body for the Japanese government, published its “Final Report: Strategies for Reforming Japanese Payment System” in December, 2015. The report emphasised that both public and private sectors in Japan should recognise how influential the innovation as well as structural changes and globalisation of payment services in conjunction with technological innovation would be in the field of financial services and should make efforts in a timely manner in the respective field to progress in the following direction:

- applying IT innovation and renovating the payment services sector;
- securing of payment system stability along with information security;
- promoting innovation and ensuring user protection; and
- demonstrating leadership in international trends concerning payment systems.

In August 2016, Japanese cabinet approved its action plan for 2016 to 2017, and named it “Japan Revitalization Strategy 2016”. The Action plan includes the Japanese government’s commitment to creating environment (FinTech ecosystems) to ensure development of fintech companies in Japan.

Since 2015, JFSA has been introducing several pro-fintech policies and measures, aimed at enhancing financial innovation through fintech:

- in September 2015, the JFSA published its first “Strategic Directions and Priorities” paper, which designated fintech as one of the areas that has top strategic priorities for the agency;
- in December 2015, the JFSA established “FinTech Support Desk” as a one-stop contact point for inquiries and opinions pertaining to businesses involving fintech; and
- in June 2016, the JFSA established a “Payments Council on Financial Innovation”, aiming to set up a framework in which members from financial sector, industry, consumer and government could work together and follow up on the progress of the action plan agreed by the aforementioned Working Group and deliver payment system reforms and payment service innovations continuously.

3.3 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

If an overseas fintech company wishes to perform regulated activities in Japan, it is basically required to obtain the same authorisation or registration that Japanese companies need to obtain to carry out such regulated activities from the relevant authorities in Japan. It is important to note that a fintech business only based overseas which deals with customers in Japan is likely to be viewed as carrying out activities in Japan. In some cases, a fintech business established in other jurisdiction that wishes to provide its service to residents in Japan is required to establish a branch office or a subsidiary in Japan to obtain such authorisation.

Considering the above, it is important for an overseas fintech company wishing to enter the Japanese market to consult with its Japanese legal advisor on whether the authorisation or registration is required under Japanese law. In connection to this, in March 2017, the JFSA made a series of announcements supporting fintech companies from other jurisdictions to enter the Japanese market which are as follows:

- the JFSA and the UK’s Financial Conduct Authority jointly announced that they exchanged letters on a co-operation

framework to support innovative fintech companies in Japan and the UK to enter each other’s market by providing a regulatory referral system. The JFSA and the Monetary Authority of Singapore (“MAS”) jointly made the similar announcement; and

- the JFSA announced the launch of the “Financial Market Entry Consultation Desk” to give advice on Japan’s financial regulations to foreign financial business operators (e.g. asset management firms) which plan to establish a business base in Japan. The JFSA’s Financial Market Entry Consultation Desk closely cooperates with the Tokyo Metropolitan Government’s “Financial One-Stop Support Service” to support foreign financial business operators planning to set up offices in Tokyo.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/ transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Yes, the Act on the Protection of Personal Information (the “APPI”) is a principle-based regime for the processing and protection of personal data in Japan. The APPI generally follows the eight basic principles of OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. The Act is applicable to all private businesses including fintech businesses. Based on the requirements of the APPI, each governmental ministry issued administrative guidelines that are applicable to specific industry sectors under its supervision. Fintech businesses should basically comply with the “Guidelines on Personal Information Protection in the Financial Industry”. In September 2015, the amendment to the APPI was promulgated and will be fully implemented on May 30, 2017. The key amendments include (i) the revision of the definition of “Personal Information” and introduction of the definition of “Sensitive Personal Information”, (ii) setting rules for utilisation of de-identified information, (iii) establishment of Personal Information Protection Commission (already established), and (iv) setting restrictions on transferring personal data to foreign jurisdictions and rules of Introducing restrictions on transferring personal data to foreign jurisdictions.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

Prior to the amendment, the APPI was applicable to any act involving personal information that was performed in Japan. In this sense, it was widely considered that the APPI does not have extraterritorial reach. However, the amended APPI will be applicable to certain acts that are performed in a foreign country. More specifically, many of the provisions of the amended APPI will be applicable to the owner of personal information regardless of the owner’s location, if the owner uses or processes such personal information of individual in Japan that is acquired, in connection with the provision of goods or services to the individual.

Before the implementation of the amendment, the APPI did not restrict the international transfer of data. Under the amended APPI, however, personal data may not be transferred to any third party in a foreign country, in principle, without consent of the person concerned. This restriction does not apply if a receiving third party

is located in a foreign country that has personal data protection systems comparable to those in Japan, or if the receiving third party takes necessary measures to protect personal data comparable to the measures that should be taken by an entity under the APPI.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Criminal sanctions may be applicable for failing to comply with the APPI. Criminal sanctions include imprisonment or a criminal fine. If a breach is committed by an officer or an employee of a judicial entity, the entity itself may also be subject to a criminal fine.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

In November 2014, the Basic Cybersecurity Act was enacted, which is a basic framework law for cyber security. Under the act the Japanese government must take measures for the implementation of cybersecurity policies including legislative, financial or taxation measures.

Currently, there are several laws and regulations in Japan that can be used to tackle cyber-crimes, including, among others, the Unfair Competition Prevention Act, the Unauthorised Computer Access Prevention Act, the APPI and the Penal Code.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The Act on Prevention of Transfer of Criminal Proceeds is the key anti-money laundering legislation in Japan (the “APTCP”). The APTCP requires financial institutions and other business entities specified in the act (“Specified Business Entities”) to adequately verify the identity of its customer upon commencement of the certain types of transactions (“Specified Transactions”). If a fintech business is included in the scope of the Specified Business Entities, it must perform such verification.

Most financial institutions including Funds Transfer Service Provider and Virtual Currency Exchange Service Provider are specified as the Specified Business Entities under the APTCP, while Issuer of Prepaid Payment Instruments is not designated under Specified Business Entities.

The Specified Transactions vary depending on the Specified Business Entities. If a transaction falls within certain high risk categories, the APTCP requires the Specified Business Entities to conduct enhanced customer due diligence.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

There is no other legislation in Japan which is aimed specifically at the fintech sector. Any additional relevant regulations would likely be specific to the sector in which a particular fintech business operates.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

In either of hiring and dismissal, it should be noted that, under Japanese law, employers are prohibited from discriminating against employees with regard to wages, working hours and any other terms of employment because of nationality, creed and social status.

With respect to hiring, there are two types of employment contracts in Japan – (i) those with a definite term, and (ii) those with an indefinite one. As a general rule, the term of a definite term employment contract shall not exceed three years. There are exceptions to this rule such as those that apply to employees that have special knowledge or expertise that the company is particularly looking for. Please note that, unless there is an objectively justifiable cause for the non-renewal and such non-renewal is socially acceptable, a definite term employment contract will be, upon the employee’s request made on or prior to the expiration date of the definite term employment contract or without delay of such expiration date, deemed to be renewed as an employment contract with an indefinite term under the same terms and conditions of employment as the definite term employment contract if a certain condition is met. Please also note that a definite term contract employee whose contract periods total over five years by renewals may convert the employment contract to an indefinite term employment contract by requesting to the employer.

With respect to unilateral dismissal, where an employer terminates the employment contract unilaterally against the employee’s will, the employer must give the employee at least 30 days’ prior notice to be dismissed or make payment of the average wage in lieu of the notice. Generally speaking, it is considerably difficult for any employer in Japan to unilaterally dismiss an employment contract. The employer must abide by a rule that a dismissal shall, where the dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid. Please also note that, in case of dismissal as a means of employment adjustment (i.e. collective redundancies), the following four requirements shall all be satisfied: (i) necessity of reduction; (ii) effort to avoid dismissal; (iii) rationality in selection of target employees; and (iv) procedural appropriateness. Given the difficulty of the dismissal, practically, the employers sometimes offer a certain monetary package that would induce an employee to voluntarily resign.

5.2 What, if any, mandatory employment benefits must be provided to staff?

Employers are required to pay at least the minimum wages stipulated by the law. As a general rule, (i) the wage must be paid at least monthly on a particular date, (ii) the payment must be in cash, in Japanese Yen, (iii) no amount can be deducted from the wage, and (iv) the wage must not be paid to anyone other than the employee.

Employees are entitled to take at least one statutory holiday a week. The maximum working hours cannot exceed eight hours a day or 40 hours a week. An employer must give all employees that have worked 80 percent or more of the designated workdays in the preceding year a certain number of days of annual leave.

In order to have employees work overtime or work during holidays, the employer is required to (i) execute an employee-employer agreement in writing on such overtime work with the labour union which represents a majority of employees or, if such union does not exist, with an employee who represents a majority of employees, and (ii) refer to the possibility of overtime work and work on statutory holidays in the Rules of Employment in advance.

An employer is, in general, required to have the following two types of insurance for its employees: (i) Labour Insurance (Workers' Compensation Insurance and Unemployment Insurance); and (ii) Social Insurance (Health Insurance and Welfare Pension Insurance).

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

For foreign workers to visit and work in Japan, the highly skilled professional visa or working visa is necessary. Under the Japanese points-based system, foreign nationals recognised as “highly-skilled foreign professionals” will be given preferential immigration treatment. There are three categories of activities of highly-skilled foreign professionals: (i) advanced academic research activities (activities of engaging in research, research guidance or education based on a contract entered into with a public or private organization in Japan); (ii) advanced specialised/technical activities (activities of engaging in work requiring specialised knowledge or skills in the field of natural sciences or humanities based on a contract entered into with a public or private organization in Japan); and (iii) advanced business management activities (activities of engaging in the operation or management of a public or private organisation in Japan). The preferential treatment includes (i) permission for multiple purposes of activities, and (ii) grant of the five-year period of stay, and so forth.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Fintech, or technology related to finance, may be protected by patent or copyright.

A patent is granted for inventions that are “highly advanced creations of technical ideas utilising the laws of nature” and that are industrially applicable. For instance, a patent may be granted for computer software as either an invention of a product or an invention of a process, provided that it involves hardware control or process-using hardware. The mathematical algorithm itself is not patentable. Business methods themselves are not patentable, however, a patent may be granted for business methods which are combined with computer systems or other devices.

Productions in which thoughts or ideas are expressed in creative ways (and which fall within the literary, scientific, artistic or musical domain) are protected by copyright as “works”. Databases which constitute creations by means of selection or systematic construction of information contained therein are protected as independent works. Computer programs may be protected as works if the way in which the instructions to the computer are expressed constitute creations.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Under Japanese patent law, a patent for an invention is owned by the inventor. Only a natural person can be the inventor originally entitled to filing a patent for the invention. For an invention created by an employee, the right to obtain a patent may be assigned to an employer in accordance with the rules established by the employer, and said employer may file the patent application as the applicant to the extent that the employer reasonably compensates its employee. The process for determining “reasonable value” may often be clarified in an agreement or Rules of Employment. In the case where the amount to be paid in accordance with the provision on “reasonable value” is found to be unreasonable, or where no provision setting forth the method for calculation exists, the amount of the “reasonable value” shall be determined by the court in light of the amount of profit to be received by the employer from the working of the patent, the employer’s burden and contribution to the invention and treatment of the employee and any other circumstances relating to the invention.

The authorship of a work which is created by an employee during the performance of the duties for their employer is attributed to the employer. An author fundamentally obtains the moral rights of author as well as the copyright. The moral rights of the author include the right to make the work public, the right to determine the indication of the author’s name and the right to maintain integrity. The moral rights of the author are personal and exclusive to the author.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

IP rights are territorial rights in principle. On the other hand, Japan has adopted the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Patent Law Treaty and the WIPO Copyright Treaty.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP may be exploited or monetised through (i) assignment, (ii) grant of security interest, or (iii) licence. Depending upon the IP rights, the formalities of these transactions are different.

Rights in registered patents can be assigned to any party upon registration of the assignment. Copyright and neighboring rights can be assigned through an agreement, without registration, however, registration is necessary to perfect the assignment.

Rights in registered patents can be pledged for the benefit of any party upon its registration, which is required in order for the pledge to be valid and enforceable. Copyright and neighboring rights can be pledged for the benefit of any party by an agreement without registration, although the pledge can still be registered in order to perfect the agreement.

Exclusive and non-exclusive licences to intellectual property rights are effective upon the creation of an agreement between the right holder and a licensee.

**Taro Awataguchi**

Anderson Mōri & Tomotsune
Akasaka K-Tower, 2-7, Motoakasaka
1-chome, Minato-ku
Tokyo 107-0051
Japan

Tel: +81 3 6894 1073
Email: taro.awataguchi@amt-law.com
URL: www.amt-law.com/en

Taro Awataguchi has extensive experience in the field of banking, financing and insolvency, and is recognised by *Best Lawyers* (banking and financing law). He also advises clients on legal matters of FinTech and virtual currencies. He was appointed by the Japanese court as the trustee in bankruptcy proceedings of a bitcoin related company where various disputes related to bitcoin were involved. He is a frequent lecturer on finance matters and spoke on "Cryptocurrencies" at the American Bar Association (ABA) Section of International Law 2016 Fall Meeting held in Tokyo. He is also noted for successful creditor representations in various cross-border collection/insolvency matters.

**Ken Kawai**

Anderson Mōri & Tomotsune
Akasaka K-Tower, 2-7, Motoakasaka
1-chome, Minato-ku
Tokyo 107-0051
Japan

Tel: +81 3 6894 2053
Email: ken.kawai@amt-law.com
URL: www.amt-law.com/en

Ken Kawai has extensive experience advising financial institutions, investors and corporate clients on litigation, complex finance and financial regulatory matters.

Ken's focus has been on derivatives. He counsels global banks, broker-dealers and investors on regulatory matters and best practices regarding derivatives and related products. His in-depth understanding of the actual practices derives from his 17-year career at The Bank of Tokyo Ltd./The Bank of Tokyo-Mitsubishi (presently The Bank of Tokyo-Mitsubishi UFJ Ltd.), where he mainly engaged in derivatives trading and marketing.

Ken has also been very actively advising fintech companies, financial institutions and self-regulatory organisations on fintech legal issues including those of payments, personal financial managements, cryptocurrencies and blockchain.



Anderson Mori & Tomotsune is among the largest and most diversified law firms in Japan offering full corporate services. Our flexible operational structure enables us to provide our corporate clients with effective and time-sensitive solutions to legal issues of any kind. We are pleased to serve Japanese companies as well as foreign companies doing business in Japan. In response to the increasingly complex and varied legal needs of our clients, we have grown significantly, augmenting both the breadth and depth of expertise of our practice. Our principal areas of practice consist of Corporate, M&A, Capital Market, Finance and Financial Institutions, FinTech, Real Estate, Labour and Employment, Intellectual Property/Life Sciences/TMT, Competition/Antitrust, Tax, Energy and Natural Resources, Litigation/Arbitration/Dispute Resolution, Bankruptcy and Insolvency/Restructuring, International Trade and International Practice (China, India, Asia, US, EU and others).

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk