



The Legal 500 & The In-House Lawyer
Comparative Legal Guide

Japan: Fintech

This country-specific Q&A provides an overview to
Fintech law in **Japan**.

It will cover open banking, regulation of
data, cryptocurrencies, blockchain, AI and insurtech.

This Q&A is part of the global guide to Fintech. For a
full list of jurisdictional Q&As
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1. What are the sources of payments law in your jurisdiction?

There are many payment methods and instruments in Japan, but no comprehensive payment law. The General payment rule applicable to rights and obligations is governed by the Civil Code (Act No. 89 of 1896). The rules for the issuance and control of cash are subject to the Act on Unit of Currency and Issuance of Cash (Act No. 42 of 1987). In addition to these general rules, certain payment methods/instruments are regulated as follows:

1.1. Prepaid Payment Instrument ("PPI")

A PPI is an instrument that records a certain value charged in advance of use and is then debited as payment of consideration for goods and/or services. PPIs are regulated under the Payment Services Act (Act No. 59 of 2009).

1.2 Installed Payment

Installed Payments, in connection with the payment of consideration for goods or services to be divided over 2 months or more, are regulated under the Instalment Sales Act (Act No. 159 of 1961). The Act substantially covers all credit card payments.

1.3 Remittance

Traditionally, remittance was regulated by the Banking Act (Act No. 59 of 1981) and other specific laws applicable to financial institutions. Only banks and such financial institutions were allowed to conduct remittance businesses. However, since the introduction of the Payment Services Act in 2009, certain registered companies, other than banks or financial institutions, are permitted to handle the remittance of up to JPY 1 million.

1.4 Others

There are some other traditional payment methods, each subject to specific legislation. For example, promissory notes are subject to the Negotiable Instrument Act (Act No.20 of 1932) and checks are subject to the Check Act (Act No. 57 of 1933), though the issuers of such payment methods are not required to be licensed or registered; the Eelectronically Recorded Monetary Claims Act (Act No. 102 of 2007) provides a legal framework for the electronic recording of monetary claims.

2. Can payment services be provided by non-banks, and if so on what conditions?

Non-banks can provide payment services up to JPY 1million.

As for PPIs, the issuer must register its PPI business and the characteristics of the PPI at the competent Local Finance Bureau. The application for registration will be rejected if any of the disqualification conditions provided under the Payment Services Act exists, such as the net assets of the issuer being less than JPY 100 million, the issuer fails to maintain compliance systems and fails to monitor and control the stores where such PPIs are to be used.

Credit providers for instalment payments are required to file for registration with the head of the competent local bureau of the Ministry of Economy, Trade and Industry ("METI"). Disqualification conditions, such as insufficient net assets (e.g. an intermediary of comprehensive credit purchase must maintain net assets equal to 90% or more of its capital amount) depend on the types of goods and/or services the relevant instalment payment is made for. Similar to the PPI regulation, there are also certain compliance requirements.

3. What are the most popular payment methods and payment instruments in your jurisdiction?

The most popular payment method is definitely cash. According to "Cashless Vision", a cashless payment related report issued by METI in April 2018, the rate of cashless settlements in Japan is 18.4% (which is very low compared to South Korea (89.1%) or the United States (45.0%)). Other than cash, the most popular payment methods are credit cards and prepaid instruments.

4. What is the status of open banking in your jurisdiction (i.e. access to banks' transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?

In March 2017, the Diet enacted a bill amending the Banking Act to regulate “Electronic Payment Intermediate Service Providers” and facilitate open API (Application Programming Interface). The amendments, including relevant subordinate regulations, have come into effect on June 1, 2018. The amendments require entities that provide Electronic Payment Intermediate Services to register with the Japan Financial Services Agency (the “JFSA”). Electronic Payment Intermediate Service Providers are defined broadly enough to include intermediaries between financial institutions and customers, such as entities using IT to communicate payment instructions to banks based on entrustments from customers or entities using IT to provide customers with information about their accounts that are held in banks. Under the amendments, financial institutions must adopt and make public the standards for decisions to enter into contracts with specific Electronic Payment Intermediate Service Providers. Financial Institutions must treat Electronic Payment Intermediate Service Providers that meet such standards in a fair and non-discriminatory manner. Financial institutions intending to enter into contracts with Electronic Payment Intermediate Service Providers are required to make efforts to develop an open API system within two years following the date.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

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 the OECD Guidelines on the Protection of Privacy and Transborder Flow of Personal Data. The Act is applicable to all private businesses, including Fintech. Based on the requirements of the APPI, each governmental ministry issued administrative guidelines applicable to the specific industry sectors under its supervision. Fintech businesses must comply with the “Guidelines on Personal

Information Protection" that are relevant to the financial services industry.

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

In order to encourage Fintech innovation, the JFSA introduced the "Fintech Testing Hub" in September, 2017. The JFSA sets up, on a case-by-case basis, a support team that helps Fintech companies and financial institutions identify and solve potential legal issues and risks associated with new Fintech schemes.

In June, 2018, the headquarters of Japan's Economic Revitalization of the Cabinet Secretariat opened a cross-governmental one-stop desk for the Regulatory Sandbox Scheme in Japan. The resource, available to Japanese as well as foreign companies, enables applicants (once approved) to carry out, under certain conditions, a demonstration of their projects even if such activities are not yet covered under current laws and regulations and without requiring a legal amendment. Blockchain technology, together with AI, IoT and big data, are explicitly mentioned in the basic policy as prospective and suitable areas.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

Japan was the first country to establish a regulatory framework for virtual currencies. The cryptocurrency market in Japan experienced exponential growth in 2017 on the coattails of a steep rise in the price of bitcoin and growing enthusiasm for initial coin offerings ("ICOs"). Japan has emerged as one of the largest cryptocurrency markets globally, and the Japanese government signalled its intention to support and encourage continued and sustainable growth of the cryptocurrency market.

However, the upsurge of the Japanese cryptocurrency market was arrested in January 2018 when one of the largest cryptocurrency exchanges in Japan, announced losses of

approximately USD 530 million due to a cyber-attack on its network. After that hacking incident, the JFSA conducted inspections of all deemed crypto-exchanges (i.e. the crypto-exchanges which are allowed to provide services to its clients without having the applicable registration during the grace period) and seven registered crypto-exchanges. The JFSA found that most of these entities are weak especially in the areas of AML/CFT and cyber security and issued business improvement orders ("BIO") or business suspension orders to all these exchanges. Based on the findings in the inspection, the JFSA raised the bar for obtaining the registration as a Virtual Currency Exchange Service Provider is much higher than before. In addition, in order to enhance consumer protections, the JFSA established "the Study Group on Virtual Currency Exchange Services etc." (the "Study Group") that analyses and considers the appropriate legal framework for cryptocurrency-based businesses.

The incident also accelerated integration of the exchange industry. The Japan Virtual Currency Exchange Association (the "JVCEA"), a newly founded self-regulatory organization whose membership consists of 16 registered exchanges, was established on March 29, 2018. The JVCEA is FSA-accredited and proposes regulations with which its members must comply.

In summary, the weakness in AML/CFT and cyber security of the cryptocurrency exchange may hinder the development in cryptocurrency and blockchain industry.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

Currently no specific tax incentives accelerating fintech investment are granted in Japan. However, an individual angel investor can enjoy special treatment if he/she invests into new shares of a company that exists for less than 3 years and if certain requirements in relation to its size, cash flow deficit and amount of research and development ("R&D") expenses are satisfied. Further, some tax credit is available for R&D expenses, provided the company satisfies certain requirements determined based on its size.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

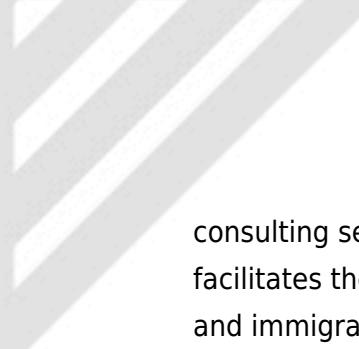
It depends on the relevant projects/companies and no typical pattern exists. Generally speaking, it is rare for foreign investors to make early stage investments in Fintech companies in Japan since domestic investors have a strong interest the industry. Due to ease of communication and language facility, Japanese Fintech companies tend to rely on domestic over foreign investors at such stage.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

The Tokyo Metropolitan Government (the "TMG") released a paper titled "Global Financial City: Tokyo" Vision - Toward the Tokyo Financial Big Bang in 2017. While it outlines various measures to nurture domestic players and attract foreign players in the entire financial sector, the TMG gives particular importance to asset management and fintech businesses and sets its aim to attract 40 foreign asset managers and fintech companies toward the fiscal year 2020.

As a part of such measures, the TMG has been holding an annual "Accelerator Program - FinTech Business Camp Tokyo" since 2017. The TMG holds such program with the goal of inviting foreign startups with cutting-edge technologies and business models to come to Tokyo and deepen their knowledge of Japan's unique market and the various needs of local companies. Further, by providing local companies the opportunity to familiarize themselves with technologies possessed by foreign entrepreneurs, such program aims to cultivate business matching and attract foreign entrepreneurs to Tokyo.

In addition, the TMG opened the "Business Development Center Tokyo" which offers foreign entrepreneurs who are considering an expansion of their businesses in Tokyo a total support package covering all aspects from business through to lifestyle issues. For foreign companies planning expansion into the Special Zone for Asian Headquarters in particular, this center provides both business exchange support and specialized



consulting services. Furthermore, the "Tokyo One-Stop Business Establishment Center" facilitates the incorporation of its ancillary procedures, such as taxes, social security and immigration, for foreign entrepreneurs considering establishing businesses in Tokyo.

Also at the national government level, the JFSA launched the "FinTech Support Desk" in 2015. This is a one-stop contact point for inquiries and exchange of information on fintech. It accepts a wide-range of inquiries on various matters in finance, from those who currently operate fintech businesses to others who intend to start fintech startups.

11. **Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?**

The TMG recently initiated a program to increase the number of foreign entrepreneurs. Before this initiative, a foreigner wishing to start up a business in Japan had to obtain a "business manager" visa. In order to receive such residency status, the applicant had to open an office in Japan as well as employ at least two full-time staff members, or invest at least JPY5 million in Japan - a high hurdle to surmount.

Pursuant to the TMG program, an applicant can receive a residency status as a business manager for half a year even if the conditions mentioned above are not met, provided that his/her business plans and other necessary information are filed with the TMG, and the TMG then confirms that such applicant is likely to fulfill the conditions within the following six month period.

The Business Development Center Tokyo provides individual support under the program so that foreign entrepreneurs are able to fulfill the visa conditions by the end of the six months and renew their residency status.

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

In order to promote entry of highly-skilled foreign professionals into Japan, the Immigration Bureau of Japan introduced the "Points-based System for Highly-Skilled Foreign Professionals" in 2012. Pursuant to this system, a highly-skilled foreign professional can earn points depending on his/her academic background, work experience, annual income, age and other factors and, if such points reach the prescribed threshold, may be entitled to preferential treatment, including (i) permission for multiple activities during his/her stay in Japan, (ii) a five-year stay, (iii) relaxation of requirements for permanent residence permit, (iv) permission for his/her spouse to work in Japan and, (v) subject to certain conditions, permission for bringing his/her parents and domestic worker to Japan. It is expected that a bonus of 10 points will be granted to highly-skilled foreign professionals who work in a fintech company designated by the TMG.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

There are no specific Intellectual property regulatory provisions applicable solely to fintech businesses. Such businesses are protected under the Patent Act, the Trademark Act, the Copyright Act, the Design Act and the Unfair Competition Prevention Act.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

14.1 Definition of Virtual Currency

The Payment Services Act ("PSA") defines "Virtual Currency" and requires a person who provides Virtual Currency Exchange Services to be registered with the JFSA.

The term "Virtual Currency" is defined in the PSA as:

- (i) proprietary value that may be used to pay an unspecified person the price of any goods purchased or borrowed or any services provided and may be sold to or purchased from an unspecified person (limited to that recorded on electronic devices or other objects by electronic means and excluding Japanese and other foreign currencies and Currency Denominated Assets; the same applies in the following item) and that may be transferred using an electronic data processing system; or
- (ii) proprietary value that may be exchanged reciprocally for proprietary value specified in the preceding item with an unspecified person and that may be transferred using an electronic data processing system.

"Currency Denominated Assets" means any assets that are denominated in Japanese or other foreign currency. Such assets do not fall within the Virtual Currency definition. For example, prepaid e-money cards usually fall under Currency Denominated Assets. If a coin issued by a bank is guaranteed to have a certain value of fiat currency, such a coin is unlikely to be treated as Virtual Currency but rather as Currency Denominated Assets (for detail, please see No.22 below).

14.2 Definition of Virtual Currency Exchange Services

The term "Virtual Currency Exchange Services" means any of the following acts carried out as a business:

- (i) sale and purchase of Virtual Currency or exchange of Virtual Currency for other Virtual Currency;
- (ii) intermediary, brokerage or delegation for the acts listed in (i) above; or
- (iii) management of users' money or Virtual Currency in connection with the acts listed in (i) or (ii) above.

A person so registered with the JFSA is called a Virtual Currency Exchange Service Provider. Only Virtual Currency Exchange Service Providers may engage in Virtual Currency Exchange Services. A Foreign Virtual Currency Exchange Service Provider who did not register with the JFSA is prohibited from soliciting items (i) through (iii)

above to persons in Japan. Advertisements in the website of Foreign Virtual Currency Exchange Service Provider fall under the definition of solicitation, except where reasonable measures (such as prevention of access from Japan by blocking the Japanese IP address and disclaimer language cautioning that residents of Japan cannot participate in the transaction) have been taken so that the advertisements will not lead to transactions related to Virtual Currency Exchange with persons in Japan.

The applicant must be (i) a stock company (kabushiki-kaisha), or (ii) a Foreign Virtual Currency Exchange Service Provider which has an office and representative(s) in Japan. Accordingly, any foreign entity wishing to register as a Virtual Currency Exchange Service Provider with the JFSA must establish either a subsidiary (in the form of kabushiki-kaisha) or a branch in Japan.


In addition, the applicant must have (a) sufficient financial basis (minimum capital amount of JPY10 million and a positive net assets amount), (b) a satisfactory organizational structure and certain systems to conduct the Virtual Currency Exchange Service appropriately and properly, and (c) certain systems to ensure compliance with relevant laws and regulations.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

Tokens issued by way of ICOs take many forms, and the Japanese regulations applicable to each token vary depending on the ICO scheme involved.

15.1 Securities-type Tokens

A token may be deemed to constitute equity interest in an investment fund (i.e., a collective investment scheme) under the Financial Instruments and Exchange Act of Japan (the "FIEA"), if the profits of the issuer are distributed to the holders of such tokens in accordance in the ratio of each holder's ownership of tokens. The issuers of tokens that are deemed equity interests in an investment fund are regulated by the FIEA.



In such cases, the offering of tokens must be conducted by a duly-registered Type II Financial Instruments Business Operator, unless the offer constitutes an exempt private placement restricted to Qualified Institutional Investors and the like, pursuant to Article 63 of the FIEA. If the token also falls within the definition of “Virtual Currency” under the PSA, the token would be subject to regulation under the PSA as well. However, it is unclear in such a case whether the token issuer would be required to comply with the requirements of the PSA in addition to those of the FIEA.

15.2 Prepaid Card-type Tokens

Tokens that are similar to prepaid cards, in the sense of being usable as consideration for goods or services provided by token issuers, may be regarded as "Prepaid Payment Instruments", and accordingly, subject to applicable regulations under the PSA. It is noteworthy that a token subject to "Prepaid Payment Instruments" regulations under the PSA would not simultaneously be subject to PSA regulations applicable to "Virtual Currency", and vice versa.

15.3 Virtual Currency-type Tokens

Where a token falls within the definition of Virtual Currency, Virtual Currency-related regulations under the PSA will apply. Where a token is subject to the PSA, it must be sold by or through a Virtual Currency Exchange Service Provider.

Based on the prevailing view as well as current practices, where a token issued via an ICO is already in circulation on a Japanese or foreign cryptocurrency exchange, such token would be deemed a Virtual Currency under the PSA, since a market of exchange for that token is already in existence. It's worth noting that, due to lack of exchange restrictions applicable to such token, a token not yet in circulation is also likely to be considered a Virtual Currency under the PSA if it is readily exchangeable for Japanese or foreign fiat currencies or Virtual Currencies.

By extension of this reasoning, Virtual Currency-type tokens issued via an ICO would be deemed Virtual Currencies upon their issuance. Similarly, the sale of such tokens would constitute the sale of Virtual Currencies. Hence, as a general rule, a token issuer must

be registered as a Virtual Currency Exchange Service Provider if the token sale (i.e., the ICO) is targeting residents of Japan. Notwithstanding the foregoing, it has been argued that a token issuer does not need to undergo registration as a Virtual Currency Exchange Service Provider if the issuer has completely outsourced its token issuance to a reliable ICO platform provider that is registered as an Exchange Provider.

In summary, under current practice, in order to legally implement an ICO to residents of Japan, there are two options:

- (i) ICO issuer acquires a registration as a Virtual Currency Exchange Service Provider and then distributes its ICO tokens; or
- (ii) ICO issuer delegates the sale distribution of its ICO tokens entirely to a registered Virtual Currency Exchange Service Provider.

There are reports that the JVCEA is currently considering the incorporation of the ICO regulation within its self-regulatory rule. Concurrently, however, the JFSA is also reviewing the relevant regulation with a view of a discussion by the Study Group. Given the rapidity of change in ICO practice, for the time being, ICOs are likely to be regulated by the self-regulatory rule stipulated by the JVCEA. However, it is possible that in the future ICOs will be regulated under a specific law, like the FIEA.

16. **Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?**

There are several projects that handle data generated on blockchain in various areas, such as securities dealing, international money transfer, asset management, trading business, etc. Please note, however, that most of these blockchain projects don't advance beyond being a concept and remain at the stage of demonstrative experiments. If such projects were to issue digital tokens generated on a blockchain and then exchangeable with other tokens such as Bitcoin, Ether or the likes, then such tokens would have likely been deemed Virtual Currency. In such case, the exchange of such tokens with consideration would have likely been deemed a Virtual Currency Exchange Service. Due to the regulatory uncertainty, our view is that most blockchain projects will not go beyond the demonstration experiments stage.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

While the use of artificial intelligence in the financial sector still appears to be limited, we can find several players in this sector attempting to utilize it in their business. For example, certain asset managers recently launched mutual funds that use artificial intelligence to make automated investment decisions. Certain banks announced that they'd launch new loan programs utilizing artificial intelligence as an automated loan screening tool in the near future. Certain insurance companies are also attempting to utilize artificial intelligence to handle insurance claims and examine payments of such claims.

In general, the national government of Japan shows a proactive attitude towards the use of artificial intelligence. In the financial sector, the Financial Services Agency supported the testing of a project whereby an IT vendor and financial institutions attempted to have artificial intelligence undertake primary screening of customers' voices and extract potential compliance breaches and customers' complaints based on them. It recently announced the successful completion of the project with the statement that the use of artificial intelligence would be feasible for this kind of screening process.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

Insurtech appears to be still behind other areas of fintech, such as payment and cryptocurrency businesses in Japan. While quite a few Japanese insurance companies appear to be interested in insurtech and, therefore, either attempt to develop their own insurtech tools or invest in overseas insurtech enterprises, we have not seen many

insurtech startups in Japan so far.

19. **Are there any areas of fintech that are particularly strong in your jurisdiction?**

[AMT to the editor : Is this question appropriately placed? It seems to be unrelated to Insurtech.]

Cryptocurrency-based businesses were notably active in Japan last year. Japan became one of the major cryptocurrency trading centers in the world. Since Japan is the first country to introduce a registration mechanism for cryptocurrency exchange businesses and as the Japanese cryptocurrency market is one of the largest in the world, more than 100 entities, including foreign ones are in the process of applying for registration. Other cryptocurrency-based businesses, such as cryptocurrency/ICO investment funds and mining businesses are becoming popular. Other than cryptocurrency-based businesses, new types of money transfer and payment services have been multiplying. For instance, Japan Bank Consortium, consisting of more than 60 banks, is launching a project for the creation of a new money transfer system based on distributed ledger technology.

20. **What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?**

Financial institutions, such as banks or securities corporations, have a strong interest in blockchain technology and are generally favourable to investing in Virtual Currency Exchange Service Providers. For instance, it is reported that one of the major internet securities corporations in Japan, acquired 100% of the shares of one of the largest cryptocurrency exchanges in Japan on April 2018, and another major internet securities corporation, also invested in a deemed Virtual Currency Exchange Service Provider on August 2018.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

As noted above, financial institutions have a strong interest in blockchain technology. For instance, it is reported that one of the largest Japanese banks has considered to issue its stable coin fully or preponderantly pegged to the price of Japanese Yen ("JPY"). A stable coin can be used to pay unspecified persons or entities for goods or services provided by them, can be transferable to unspecified persons or entities and can be converted to JPY.

A stable coin, fully pegged to the price of JPY("JPY-pegged coin") does not fall under the PSA's definition of "Virtual Currency". Such a coin is likely to be considered a "Currency Denominated Asset". Meanwhile, a JPY-pegged coin, being a tool for fund transfer, is likely to be considered electronic money. In order to issue JPY-pegged coins, the issuer must be a bank, a financial institution that is permitted to handle deposits under applicable laws or a fund transfer business operator registered with the relevant Local Finance Bureau under the PSA.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

There are no strong examples of disruption through fintech in Japan. However, even though ICO regulation is getting stricter globally and raising capital by ICO is becoming more difficult, it is reported that the raising of capital by ICO far exceeded that of venture capital during the first quarter of 2018. Although the future development for ICO in Japan is not clear yet, it is possible that ICOs will be established as one of the crowdfunding methods.