



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Japan: Blockchain

This country-specific Q&A provides an overview of the legal framework and key issues surrounding blockchain law in [Japan](#).

This Q&A is part of the global guide to Blockchain.

For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/blockchain/>

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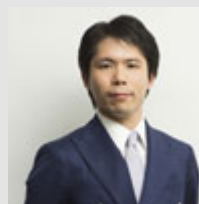
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- 1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction, and what is the state of development of the market?**

Japan was the first country to establish a regulatory framework for crypto assets. Perhaps because of this head start, blockchain technology is now being increasingly adopted in the Japanese financial industry. For example, there are 20 licensed crypto



asset exchange service providers as of September 2019. Japan Exchange Group, Inc. has also conducted proof of concept (“POC”) testing and research to explore the possibility of applying blockchain or distributed ledger technology to the capital markets infrastructure in Japan . Additionally, in June 2019, Nomura Holdings, Inc. and Nomura Research Institute, Ltd. announced that they have signed a memorandum of understanding for the establishment of a joint venture, which will make use of blockchain technology to develop a platform for the exchange of securities and other rights .

At the same time, blockchain technology is also being applied in non-financial industries, such as P2P electrical power trading platforms, automakers, trade finance, academic degree, gaming and the like although most of them are still in the stage of POC. For instance, in October 2019, it is reported that five major automakers (including one of the biggest automakers in Japan) had begun field tests for a blockchain-based vehicle identification system that would enable drivers to automatically pay parking fees or highway tolls without the use of cash or cards .

As noted under Q15, however, although certain businesses are already applying blockchain technology for practical purposes, such as Blockchain Game (as defined below), most businesses are still at the POC stage.

2. Have there been any notable success stories or failures of applications of these technologies in your jurisdiction?

Being the first country to establish a regulatory framework for crypto assets, and having emerged as one of the largest crypto asset markets globally , Japan has generated some examples of the successful application of blockchain technologies. For instance, in 2017, QUOINE Corporation (now known as Liquid by Quoine; “QUOINE”) became the first in the world to launch an initial exchange offering (“IEO”), which went on to raise over JPY 10 billion.

Following that, however, the Financial Services Agency of Japan (“FSA”) stated that an initial coin offering (“ICO”) to Japan residents should constitute a crypto asset exchange service (“Exchange Service”). As a result, virtually none of the ICOs



conducted in Japan after QUOINE's IEO has been conducted.

As a result, the recent spate in blockchain technology-related businesses are businesses that have not been established under financial regulation related to Crypto Assets (i.e., the PSA or the FIEA), such as Blockchain Games (as defined below) and similar businesses.

3. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

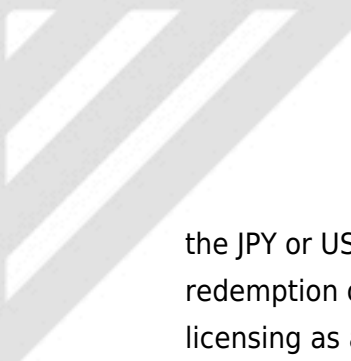
No blockchain-specific regulatory framework currently exists in Japan, nor is such regulatory framework anticipated in the near future. Accordingly, blockchain or related businesses and services will be regulated under existing laws or regulations, depending on the legal characteristic of the token minted on a blockchain or the substance of such services.

For example, if the tokens minted on a blockchain ("Blockchain-minted Tokens") fall within the definition of "Crypto Asset" under the PSA, then a business operator who purchases or sells such tokens in the course of its business will be regulated as a Crypto Asset exchange service provider ("Exchange Provider").

Additionally:

(i) a person who sells, purchases or handles the public offering of Blockchain-minted Tokens that fall within the definition of "securities" under the FIEA must be registered as a Type I Financial Instruments Business Operator;

(ii) an issuer of Blockchain-minted Tokens that are pegged to fiat currencies (such as



the JPY or USD) (“Stable Coin”), or an affiliate of such issuer, who guarantees the redemption of such Stable Coins in fiat currencies may be required to undergo licensing as a fund remittance business operator (“FRBO”) under the PSA , or as a Bank under the Banking Act; and

(iii) a business operator who handles the personal information of its users may be subject to the Act on the Protection of Personal Information (“APPI”).


4. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

The Japanese government has a generally positive view of the use of blockchain technology in various kinds of businesses.

For instance, in June 2019, the Japanese government published an “Action Plan of the Growth Strategy” , which discussed the importance of the use of blockchain technology, stating “AI, IoT, robots, big data, blockchain ... are general purpose technology (GPT) that broadly affect all industries, similar to adoption of electric power from the 19th to 20th century and IT inroads through the end of the 20th century.”.

5. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox)?

To encourage Fintech innovation, including the development and usage of blockchain technology, the FSA introduced the “Fintech Testing Hub” in September 2017. As part of this initiative, the FSA will set up, on a case-by-case basis, a support team that helps Fintech companies and financial institutions to identify and solve potential legal issues and risks associated with new Fintech schemes.



In addition, in June 2018, the headquarters of Japan's Economic Revitalization of the Cabinet Secretariat established a cross-governmental one-stop desk for the Regulatory Sandbox Scheme in Japan. This 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. Blockchain technology, together with AI, IoT and big data, are explicitly mentioned in the basic policy of the Regulatory Sandbox Scheme as prospective and suitable areas for exploration and development.

Furthermore, in February 2019, the Ministry of Economy, Trade and Industry ("METI") held an event entitled "Blockchain Hackathon 2019", which is generally known as the first step towards social implementation of blockchain technologies in the domains of academic degrees, courses and career certifications, as well as in the recording and storage of research data .

6. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

METI has conducted the "FY2017 Infrastructure Development Program Concerning Data-driven Society in Japan (Survey on Technology and Institutes Related to Distributed System)" to uncover core technologies and legal systems that are required for the public implementation of distributed systems (such as blockchain technologies), and compiled the survey results into the "Report on the Survey on Technology and Institutes Related to Distributed System" , on July 23rd, 2019 (the "METI Report 2019").

It is stated in the METI Report 2019 that METI chose the following three usage areas as targets for the evaluation of distributed systems, with the aim of (i) showing case examples of how distributed systems work in practice (which may vary greatly from case to case) and (ii) promoting their utilization:

- (i) medical and healthcare industry: clinical trial data management platform;
- (ii) logistics, supply chains and mobility industry: EV battery life-cycle management

platform; and

(iii) smart property industry: smart token platform.

In the process of evaluating the practical usage of distributed systems, METI recognized the existence of many challenges to the commercialization of distribution systems (such as blockchain technologies), because the approaches taken under these systems (which are based on trustworthy centralized databases) are different from the approaches under conventional systems. METI has made it a priority to overcome these challenges and is exploring core technologies for purposes of doing so.

7. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

No official guidance concerning the use of blockchain technology has been published in Japan so far.

8. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

The PSA requires a person who provides Exchange Services to be registered with the FSA.

"Crypto Asset" 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 ("Type I

Crypto Asset"); 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 ("Type II Crypto Asset").

"Currency Denominated Assets" means any assets that are denominated in Japanese or other foreign currency. Such assets do not fall within the definition of Crypto Asset.

To enhance the regulation of Exchange Providers and to strengthen the regulatory framework surrounding Crypto Assets, a bill containing proposed revisions to the PSA ("PSA Revisions") and FIEA ("FIEA Revisions") was tabled before the Diet on March 15, 2019 ("Bill"). The Bill was passed by both chambers of the Diet on May 31, 2019, and will come into force within a year of its introduction.

The term "Crypto Asset Exchange Services" means any of the following acts that is carried out in the course of business:

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

Only those registered with the FSA to engage in Exchange Services may provide such services.

9. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

No.

10. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

Based on the prevailing view and current practices, where a token issued via an Initial Coin Offering (“ICO”) is already in circulation on a Japanese or foreign cryptocurrency exchange, such token would be deemed a Crypto Asset under the PSA, since a market of exchange for that token is already in existence. It is worth noting that due to a lack of exchange restrictions, such tokens that are not yet in circulation are also likely to be considered Crypto Assets under the PSA if they are readily exchangeable for Japanese or foreign fiat currencies or cryptocurrencies.

Separately, on September 27, 2019, the Japan Virtual Currency Exchange Association (“JVCEA”), a self-regulatory organisation established under the PSA, published its self-regulatory rules and guidelines regarding ICOs for Crypto Asset-type tokens entitled “Rules for Selling New Virtual Currency” (“ICO Rules”). Under the ICO Rules, an ICO can be legally launched in Japan as long as such launch is conducted in compliance with the ICO Rules.

11. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

According to the ICO Rules, there are two types of ICO. The first is where an Exchange Provider issues new tokens and sells such tokens by itself. The second is where a token issuer delegates the sale of newly issued tokens to Exchange Providers. As a general matter, the ICO Rules stipulates the following requirements for each type of ICO:

- (i) maintenance of a structure for the review of a business that raises funds via an ICO;
- (ii) disclosure of information on the token, the token issuer’s purpose for the funds, and the like;

- (iii) segregated management of funds (both fiat and Crypto Assets) raised by an ICO;
- (iv) maintenance of proper accounting practices and records and financial disclosure of funds raised by an ICO;
- (v) ensuring the security of newly issued tokens, and of the blockchain, smart contracts, wallet tools, and the like in respect of such tokens; and
- (vi) proper valuation of newly issued tokens.


Additionally, the ICO Rules (as well as the PSA Revisions) require an ICO to be implemented in compliance with the following steps:

- (i) the Exchange Provider that will be handling the ICO token is required to assess both the feasibility of the ICO and the security of such ICO token;
- (ii) the Exchange Provider that will be handling the ICO token is required to prepare and submit a report in respect of item (i) above to the JVCEA for review;
- (iii) if the report is approved by the JVCEA, the Exchange Provider must submit a notification of change in handling Crypto Assets to the FSA; and
- (iv) upon the FSA's receipt of such notification, the Exchange Provider will be permitted to make the ICO to Japanese residents.

12. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

According to the statistics published by the JVCEA, the total volume of Crypto Asset spot trading handled by Exchange Providers in Japan as of September 10, 2019, is approximately 838 billion JPY . In the meanwhile, the total volume of Crypto Asset margin trading handled by Exchange Providers is approximately 2,872 billion JPY. These statistics clearly show that Crypto Asset margin trading is more prevalent than Crypto Asset spot trading.

Even though Crypto Asset margin trading is regulated in many countries, it is not regulated under the PSA and FIEA. With that said, Crypto Asset derivatives transactions will be regulated under the FIEA Revisions for the protection of users. Certain



regulations will also be established under the FIEA Revisions to ensure the proper conduct of such transactions. Specifically, for the purposes of subjecting derivatives transactions involving “Financial Instruments” or “Financial Indicators” to certain entry regulations and rules of conduct issued under the FIEA, the definition of “Financial Instruments” will be amended under the FIEA Revisions to include (i) “Crypto Assets” and (ii) “standardized instruments created by a Financial Instruments Exchange for purposes of facilitating Market Transactions of Derivatives by standardizing interest rates, maturity periods and/or other conditions of (Crypto Assets)”. Further, under the FIEA Revisions, the prices, interest rates, etc. of Crypto Assets will be incorporated into the definition of “Financial Indicators”.

Since Crypto Assets will be included in the definition of Financial Instruments, the conduct of Over-the-Counter Derivatives Transactions related to Crypto Assets or related intermediary (baikai) or brokerage (toritsugi) activities will also constitute Type I Financial Instruments Business unless relevant exemptions are applicable. Accordingly, business operators engaging in these transactions will need to undergo registration as Financial Instruments Business Operators in the same way as business operators engaging in foreign exchange margin trading.

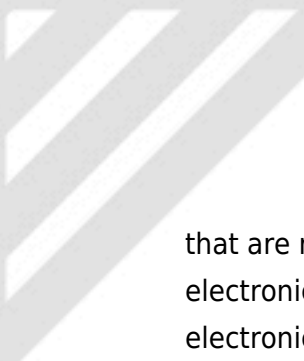
13. **Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?**

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

13.1 Securities-type Tokens

The FIEA Revisions introduced the concept of “Electronically Recorded Transferable Rights” (“ERTRs”), which clarify the scope of tokens governed by the FIEA as securities.

The concept of ERTRs relates to the rights set forth in Article 2, Paragraph 2 of the FIEA



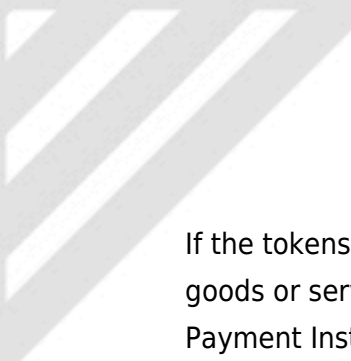
that are represented by proprietary value that is transferrable by means of an electronic data processing system (but limited only to proprietary values recorded in electronic devices or otherwise by electronic means), excluding those rights specified in the relevant Cabinet Office Ordinance in light of their negotiability and other factors.

Although Article 2, Paragraph 2 of the FIEA refers to rights of various kinds, tokens issued in “security token offerings” (“STOs”) are understood to constitute, in principle, “collective investment scheme interests” (“CISIs”) under the FIEA. CISIs are deemed to be formed when the following three requirements are met: (i) investors (i.e., rights holders) invest or contribute cash or other assets to a business; (ii) the cash or other assets contributed by investors are invested in the business; and (iii) investors have the right to receive dividends of profits or assets generated from investments in the business. Tokens issued under STOs would constitute ETRs if the three requirements above are satisfied.

To put it simply, rights treated as “Paragraph 2 Securities” (i.e., rights that are deemed securities pursuant to Article 2, Paragraph 2 of the FIEA) and represented by negotiable digital tokens will be treated as Paragraph 1 Securities (e.g. shares, bonds and notes, etc.) unless they fall under an exemption. As a result of the application of disclosure requirements to ETRs, issuers of ETRs are in principle required, upon making a public offering or secondary distribution, to file a securities registration statement and issue a prospectus. Any person who causes other persons to acquire ETRs or who sells ETRs to other persons through a public offering or secondary distribution must deliver a prospectus to such other persons in advance or at the same time.

As ETRs are expected to constitute Paragraph 1 Securities, registration as a Type I Financial Instruments Business Operator will be required for the purposes of selling, purchasing or handling the public offering of ETRs in the course of a business. In addition, any ETR issuer who solicits acquisition of such ETR (i.e., undertaking an STO), will be required to undergo registration as a Type II Financial Instruments Business Operator, unless such issuer qualifies as a specially permitted business for qualified institutional investors.

13.2 Prepaid Card-type Tokens



If the tokens are similar in nature to prepaid cards and can be used as consideration for goods or services provided by token issuers, they may be regarded as “Prepaid Payment Instruments” (maebarai-shiki-shiharai-shudan), which are subject to the relevant regulations under the PSA (in which case, regulations in respect of Crypto Assets under the PSA would not be applicable).

13.3 Stable Coin

As noted under Q8 above, "Currency Denominated Assets" are excluded from the definition of Crypto Assets. "Currency Denominated Assets" is defined under Article 2, Paragraph 6 of the PSA as assets denominated in Japanese Yen or a foreign currency, or with respect to which the performance, repayment, or any other activity equivalent thereto will be carried out in Japanese Yen or a foreign currency. Based on this definition, a digital coin whose value is pegged to the JPY, USD or any other fiat currency (such as, for example, where the price of a digital coin is always fixed at one JPY or one USD, or where a digital coin is redeemable at one JPY or one USD) would fall outside the definition of "Crypto Assets".

Issuance of Stable Coins that fall within the definition of "Currency Denominated Assets" would likely be considered providing “funds remittance transactions (Kawase Torihiki)". "Funds remittance transaction" is not defined in the Banking Act or PSA. However, the Supreme Court, in a judicial precedent, has interpreted "funds remittance transaction" to mean "undertaking, or undertaking and executing funds remittance pursuant to the request of customers through a funds remittance system, without physical delivery of cash between distantly located parties." an issuer of Stable Coins would likely be deemed to be conducting funds remittance transactions by issuing Stable Coins in exchange for fiat money.

Under the Banking Act, no person other than a Bank is permitted to conduct funds remittance transactions in Japan unless certain exemptions apply . A person licensed as an FRBO would fall under such an exemption, although we note that the funds remittance transactions conducted by an FRBO are subject to a limit of JPY 1.0 million per transaction, unlike Banks, to which no such limit applies. As applications for Banking licenses require the satisfaction of very onerous requirements and involve a timeframe of a year or more, registration as a Bank would not generally be a practical



option.

14. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

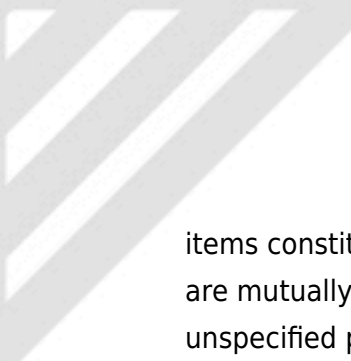
Currently, the legal characteristic of Crypto Assets under Japanese civil statute is still unclear. According to a judicial precedent of the Tokyo District Court dated August 5, 2015, legal ownership or title does not apply to Crypto Assets, as they are intangible assets. As a consequence, the transfer of a Crypto Asset does not equate to the transfer of legal ownership or title in such Crypto Asset under the Civil Code. Similarly, the grant of security over Crypto Assets would also be difficult.

In the meantime, a person who deposits his or her Crypto Assets with an Exchange Provider will have a claim against such Exchange Provider for the return of the deposited Crypto Asset under the Exchange Provider's terms of service, or the like. In such cases, the creditors of persons may create a security over such persons' claim for Crypto Assets against the relevant Exchange Providers.

15. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any key initiatives concerning the use of tokens and virtual assets in your jurisdiction.

As we noted under Q12, the trading of Crypto Assets on Exchange Providers is now prevalent in Japan.

Additionally, games that employ blockchain technology ("Blockchain Games") are gaining in popularity in Japan. Typically, in a Blockchain Game, a business operator will issue game characters or game items as non-fungible tokens ("NFT") on a blockchain, and give such characters or items unique characteristics or make them transferable on the blockchain. In such cases, the issue arises as to whether such game characters or



items constitute Type II Crypto Assets under the PSA, because such characters or items are mutually exchangeable with Type I Crypto Assets (e.g., Bitcoin or Ether) among unspecified persons on the blockchain.

Based on the FSA's public comments published on September 3, 2019 ("Public Comments") , it is generally understood that the FSA has adopted the view that whether an NFT constitutes a Crypto Asset should be determined on a case-by-case basis. At the same time, however, the Public Comments also suggest that the FSA has adopted the view that even if trading cards or game items issued as tokens recorded on the blockchain are mutually exchangeable with Type I Crypto Assets (e.g., Bitcoin or Ether), they do not constitute Type II Crypto Assets because they serve no payment functions, unlike Type I Crypto Assets. Given such regulatory clarification, it is unlikely that Blockchain game items that does not used as a means of payment would be unlikely to be considered as Crypto Assets.

16. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

There is not clear definition of "smart contracts" under Japanese law, nor is there any specific regulation of smart contracts in Japan.

Assuming that smart contracts generally mean "self-executing contracts containing terms that are pre-determined pursuant to specific programming codes", the use of smart contracts may raise issues of enforceability, although the costs of resolving such issues may be offset by the use of smart contracts.

For instance, a smart contract based on blockchain technology would be automatically enforced and irrevocable even if such contract is unenforceable for violating applicable law.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction.

In Japan, the use of smart contract is largely still at the POC stage.

With that said, the utility of smart contracts is now being considered in a broad range of industries in Japan. For instance, in May 2019, Chubu Electric Power Co., Inc. ("CEP") and Cryptoeconomics Lab, Inc. ("Cryptoeconomics") announced their joint development of an electricity trading platform using blockchain technology . It is contemplated that CEP and Cryptoeconomics will use such platform to match buyers and sellers of electricity, and enable the automatic closing and enforcement of electricity sale and purchase contracts through smart contracts.

18. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

As a result of the leakage of users' Crypto Assets with a value of approximately USD 530 million from a cyber-attack on one of the biggest Exchange Providers, the FSA conducted sweeping on-site inspections on registered and provisional Crypto Asset exchange service provider. This was followed by the FSA's announcement, on March 8, 2018, of the imposition of business suspension orders on two provisional exchanges, and business improvement orders on two registered exchanges and three provisional exchanges. After further review, the FSA on June 22, 2018, also imposed business improvement orders on six additional major registered exchanges.

In addition, on June 21, 2019, the FSA imposed a business improvement order on one of the Exchange Providers for the inadequacy of their business management, anti-money laundering and counter terrorist financing, and risk management systems, among other things.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

There has thus far been no judicial consideration of blockchain concepts or smart contracts in Japan. As noted under Q14, however, legal ownership or title in respect of Crypto Assets under the Civil Code has been considered by the courts.

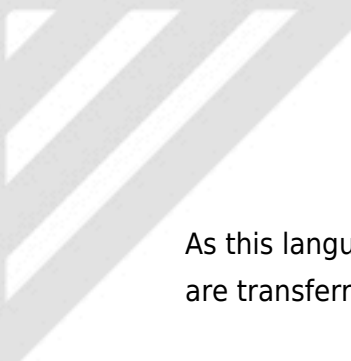
20. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

Business operators using blockchain technology may be subject to the APPI if they handle the personal information of their users.

In addition, considering that a public blockchain involves the sharing of a database among unspecified participants, where information on the blockchain will not in principle be deleted or retracted once recorded on the blockchain, the use of blockchain technology may trigger the application of the APPI. For example, Article 19 of the APPI requires business operators who handle personal information to delete unnecessary personal information once the purpose for which such personal information is required has been achieved. However, a business operator that records the personal information of its users on a blockchain may have difficulty deleting such information, and this could result in a violation of the APPI.

21. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

As noted under Q13, an ETR is required to be “represented by proprietary value transferrable by means of an electronic data processing system (but limited only to proprietary values recorded in electronic devices or otherwise by electronic means).”



As this language is consistent with the definition of Crypto Assets, Crypto Assets that are transferrable on blockchain (as is the case with bitcoins) may constitute ETRs.

Incidentally, as stated above, ETRs are expected to consist mainly of CISIs of some kind. It should be noted, however, that CISIs as exemplified in Article 2, Paragraph 2, Item 5 of the FIPA (other than for membership interests in incorporated associations) are stipulated as contractual rights under applicable laws and regulations. To transfer contractual status, the consent of the counterparty to the contract is required. For example, where ETRs represent the status of silent partners (tokumei kumiai-in) under silent partnership agreements (tokumei kumiai keiyaku) as set forth in the Commercial Code, then even if such ETRs are recorded on blockchain as being transferred from the assignor to the assignee, the status of the silent partners would not be deemed to have been transferred as a matter of course to the assignee if the consent of the operator (eigyo-sha), who is the counterparty to the contract, has not been obtained. This issue needs to be resolved. A possible solution is to provide in the relevant silent partnership agreement that the operator will be deemed to have provided its consent to a transfer of contractual status, if a silent partner transfers its contractual status on blockchain.