The Legal 500 Country Comparative Guides

Japan: Fintech

This country-specific Q&A provides an overview of fintech laws and regulations applicable in Japan.

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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, as amended). 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, as amended). 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, as amended; the "PSA").

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, as amended). The Act substantially covers all credit card payments.

1.3 Remittance
Traditionally, remittance was regulated by the Banking Act (Act No. 59 of 1981, as amended; the "Banking Act") 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 PSA in 2009, certain registered companies, other than banks and financial institutions, have been permitted to handle the remittance of up to JPY 1 million. In this regard, the Bill of Amendment of the PSA was passed on June 12, 2020. Under the amended PSA, expected to come into effect by December 2021, the remittance businesses conducted by entities other than banks and financial institutions will be classified according to three categories. Under such classification regime, the stringency of regulations applicable to entities engaging in remittance businesses will vary according to the risks involved in the business conducted. Of the three categories, one will not be subject to the JPY 1 million threshold when certain stringent requirements are met.

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, as amended) and checks are subject to the Check Act (Act No. 57 of 1933, as amended), though the issuers of such payment methods are not required to be licensed or registered; the Electronically Recorded Monetary Claims Act (Act No. 102 of 2007, as amended) 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?**

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 where 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 installed 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 unquestionably cash. According to "Cashless Roadmap 2020", a cashless payment-related report issued by the Payments Japan Association in March 2020, the percentage of cashless settlements in Japan is 21.4% (which is very low compared to South Korea (97.7%) or the United States (45.5%)). After cash, the most popular payment methods are credit cards. direct debit 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?**

   The Banking Act regulates Electronic Payment Intermediate Service Providers and facilitate open banking. The Act require entities that provide Electronic Payment Intermediate Services to register with 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. Entities providing financial account aggregation services are also categorised as Electronic Payment Intermediate Service Providers. 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.

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?**

   No.

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 in new shares of a company that has been in existence for less than 5 years and if certain requirements in relation to its size, growth rate, cash flow deficit and/or amount of research and development ("R&D") expenses are satisfied. In addition, investments in certain venture companies that advance open innovation will qualify for tax incentives if such investments are certified by the Minister of Economy. Trade and Industry. 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.

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 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. Fintech entrepreneurs and engineers could be recognized as highly-skilled foreign professionals.

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 Crypto Asset

The Payment Services Act ("PSA") defines "Crypto Asset" and requires a person who provides Crypto Asset Exchange Services to be registered with the JFSA. The term "Crypto Asset" is defined in the PSA as:

- 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
- 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 definition of Crypto Asset. For example,

prepaid e-money cards are usually considered Currency Denominated Assets. If a coin issued by a bank is guaranteed to have a certain value vis-à-vis fiat currency, such a coin is unlikely to be deemed a Crypto Asset but would instead be considered a Currency Denominated Asset. (For more a detailed discussion. please see No.22 below.)

14.2 Definition of Crypto Asset Exchange Services

The term “Crypto Asset Exchange Services” means any of the following acts carried out as a business:

- sale and purchase of Crypto Assets or exchange of Crypto Assets for other Crypto Assets;
- intermediation, brokerage or delegation of the acts listed in (i) above;
- management of users’ money in connection with the acts listed in (i) or (ii) above; or
- management of users’ Crypto Assets for the benefit of another person (“Crypto Asset Custody Service”).

A person registered with the JFSA to engage in Crypto Asset Exchange Services is called a Crypto Asset Exchange Service Provider. It should be noted that the management of Crypto Assets for the benefit of another person constitutes a Crypto Asset Exchange Service under the PSA, “unless otherwise specifically stipulated under any other law, in cases where the relevant management activity is performed in the course of a business”. As a result, a Crypto Asset Custody Service would also constitute a Crypto Asset Exchange Service, even if the Crypto Asset Custody Service does not involve any of the acts listed in items (i) and (ii) above.

14.3 Introduction of regulations governing unfair acts in crypto asset or Crypto Asset Derivative Transactions

The Financial Instruments and Exchange Act (“FIEA”) regulates crypto asset derivatives transactions (“Crypto Asset Derivatives Transactions”) for purposes of user protection and ensuring that such transactions are appropriately conducted. Specifically, for purposes of subjecting derivatives transactions involving “Financial Instruments” or “Financial Indicators” to certain entry regulations and rules of conduct issued under the FIEA, the FIEA has introduced to the definition of “Financial Instruments” (i) “Crypto Assets” and (ii) “standardized instruments created by a Financial Instruments Exchange for purposes of facilitating Market Transactions of Derivatives through the standardization of interest rates, maturity periods and/or other conditions of (Crypto Assets)”. Further, the FIEA has incorporated the prices, interest rates, etc. of crypto assets 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 constitute Type I Financial Instruments Business. Accordingly, business operators engaging in these transactions will have to undergo registration as Financial Instruments Business Operators in the same way as business operators engaging in foreign exchange margin trading.

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

The FIEA introduced the concept of ERTRs, which has served to clarify the scope of tokens governed by the FIEA. The concept of ERTRs relates to the rights set forth in Article 2, Paragraph 2 of the FIEA that are 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), 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 have been 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 ERTRs 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 unless they fall under an exemption. As a result of the application of disclosure requirements to ERTRs, issuers of ERTRs 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 ERTRs or who sells ERTRs 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 ERTRs 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 ERTRs in the course of a business. Additionally, any ERTR issuer who solicits acquisition of such ERTR (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 investor.

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 "Crypto Asset", and vice

versa.

15.3 Crypto Asset-type Tokens

A token that falls within the definition of Crypto Asset will be subject to Crypto Asset related regulations under the PSA. Where a token is subject to the PSA, it must be sold by or through a Crypto Asset Exchange Service Provider. Based on the prevailing view and 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 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. On June 25, 2019, the Japan Virtual and Crypto Assets Exchange Association ("JVCEA"), a self regulatory organization established under the PSA, published a draft of its self-regulatory rules and guidelines regarding ICOs for Crypto Asset-type tokens entitled "Rules for Selling New Crypto Asset" ("ICO Rules"). According to the ICO Rules, there are two types of ICO. The first is where a Crypto Asset Exchange Service Provider issues new tokens and sells such tokens by itself, while the second is where a token issuer delegates Crypto Asset Exchange Service Providers to sell the newly issued tokens. As a general matter, the ICO Rules stipulates the following requirements for each type of ICO:

- maintenance of a structure for the review of a business that raises funds via an ICO;
- disclosure of information on the token, the token issuer's purpose for the funds, and the like;
- segregated management of funds (both fiat and crypto assets) raised by an ICO;
- maintenance of proper accounting practices and records and financial disclosure of funds raised by an ICO;
- ensuring the security of newly issued tokens, and of the blockchain, smart contracts, wallet tools, and the like in respect of such tokens; and
- proper valuation of newly issued tokens.

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

It was announced in March 2020, by Nomura Securities Co., Ltd. and BOOSTRY Co., Ltd. announced that they had provided the technical infrastructure for and underwritten the "Digital Asset Bonds" and "Digital Bonds" (being blockchain technology-based bonds) issued by Nomura Research Institute, Ltd.

In addition, with more and more companies opting for virtual shareholder meetings in response to the ongoing outbreak of COVID-19, participatory shareholder meetings, which are virtual meetings that allow for real-time voting and questions (i.e., hybrid meetings), are attracting increasing attention. In response to these trends, some blockchain companies have begun to implement virtual shareholder meetings using blockchain technology, which enables prevention of fraudulent activities such as voting via identity theft. For instance, in June

2020, bitFlyer Blockchain, Inc. announced that it had held a virtual extraordinary general shareholders meeting using a blockchain technology-based voting service with anti-spoofing capabilities.

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 launched new loan programs utilizing artificial intelligence as an automated loan screening tool. 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 in Japan. We have not seen many insurtech startups in Japan so far. While a few Japanese insurance companies appear to be interested in Insurtech. For instance, some major Japanese insurance companies launched their new "risk tech" services, using data they had collected through their existing businesses.

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

In Japan, cryptocurrency-based businesses, mobile payment services, financial account aggregation services and robo-advisors are relatively active. It is noteworthy that An increasing number of companies entered into or expanded their businesses in the mobile payment market. In 2018 and 2019, several companies launched QR code payment services and have been providing customers with good amount of incentives. As a result, this market sector has become highly competitive.

In 2020, digital securities become a focus. Because of the amendment to the relevant laws and regulations (see questions 15 and 16), quite a few financial institutions, including major

broker- dealers and trust banks, are entering into this new market. Also, a couple of overseas digital securities platformers are trying to provide its systems to these financial institutions.

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

    Most fintech startups in Japan seek collaboration with traditional financial institutions. Traditional financial institutions have already invested in fintech start-ups including blockchain tech companies. Meanwhile, we see seldom disruption by fintechs. This trend is expected to continue.

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

    Mega banks and major broker-dealers have their own digital innovation departments and IT subsidiaries which carry out their own fintech development / innovation programmes. Local banks and other mid-size incumbent financial institutions tend to enter into collaboration with fintech startups.

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

    Due to the prevalence of cash payments in Japan, there is no immediate need for a Central Bank Digital Currency ("CBDC"). With that said, the Bank of Japan ("BOJ") has been conducting research and development of CBDC for purposes of technological innovation, and in view of trends in other countries, and possible changes in social needs. In October 2020, the BOJ announced the "Bank of Japan's Policy on Central Bank Digital Currencies". According to the policy, the BOJ will develop a general purpose CBDC with broad usage, including by individuals and companies, in response to various anticipated changes in the economic environment. and the BOJ also stated that it will conduct more in-depth studies on general purpose CBDCs, including early demonstration experiments.

    Additionally, the BOJ will launch a Proof of Concept on general purpose CBDCs in early 2021, and not limit itself to research-based studies (as it has been doing so far), to determine whether the basic functions and characteristics of CBDCs are technically feasible, and to develop a plan for the next phase of CBDC development. If a pilot experiment is deemed necessary, such pilot experiment will also be considered.