

# International Comparative Legal Guides



## Fintech 2021

A practical cross-border insight into fintech law

### Fifth Edition

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# Japan

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## 1 The Fintech Landscape

**1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?**

In Japan, cryptocurrency-based businesses, mobile payment services, financial account aggregation services and robo-advisers have been quite active during the past year. In response to the COVID-19 pandemic, competition among mobile payment services has become fiercer than ever before.

2020 has seen an increasing number of major financial institutions entering into the blockchain-based digital securities sector. Their main focus is on digital corporate notes and tokenised equity interests of real estate funds. This new trend was boosted by the introduction of new regulations on digital securities under the Financial Instruments and Exchange Act (the “FIEA”), which came into effect on May 1, 2020.

In late 2020, non-fungible token (“NFT”)-related businesses became popular, especially in the online gaming sector. In addition, a couple of platforms for issuing and trading tokenised digital art have recently emerged.

In June 2020, the Act on Sales, etc. of Financial Instruments (the “ASFI”) was amended, enabling the establishment of financial services intermediary businesses that are capable of intermediating the cross-sectoral banking, securities and insurance financial services under a single licence. The ASFI was renamed the Act on Provision of Financial Services (the “APFS”) and will come into effect in the second half of 2021. The growth of such one-stop financial service intermediary businesses will be one of the main focal points to observe in 2021.

**1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?**

Currently, no fintech-specific prohibition or restriction is in effect in Japan.

## 2 Funding For Fintech

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

The new businesses’ funding methods vary depending on their level of maturity: (i) seed stage; (ii) start-up stage; (iii) early growth stage; and (iv) sustained growth stage. In the case of the first two, the founder’s own savings and borrowings and/or capital injection by his or her family and friends are commonly used. In addition to angel investors providing equity capital, the Japan Finance Corporation and various municipalities also offer certain lending facilities to support seed and early stage start-ups up to a certain ceiling. In early to sustained growth stages, bank loans or venture capital are the more likely sources of funding. Crowdfunding is an option at any stage.

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

The following tax incentives have been made available to angel investors:

- (i) amounts invested in a start-up or venture company, which has made no profit in the five years following its establishment, can be deducted from the investor’s income; and
- (ii) capital gains from the transfer of shares in a company that is less than 10 years old will be exempt from capital gains tax.

A “tax incentive to promote open innovation” is effective until the end of March 2022. Under this system, a 25% income deduction applies to investments of at least JPY 100 million by domestic entities and CVCs in unlisted venture companies that are less than 10 years old.

There is also a research and development tax incentive system in Japan. This incentive system is regularly updated with the aim of maintaining and strengthening research and development initiatives to enhance Japan’s global competitiveness.

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

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

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

On December 22, 2020, WealthNavi Inc, a leading Japanese robo-adviser company, debuted on the TSE’s Mothers market. Based on the listing day opening price, its market capitalisation was approximately USD 750 million. The company was founded in 2015.

On December 17, 2019, Freee K.K., a cloud-based accounting software provider, debuted on the TSE’s Mothers market. Based on that date’s closing price, market capitalisation reached approximately USD 1.15 billion. The company was founded in 2012 and is registered as an Electronic Payment Intermediate Service Provider under the Banking Act.

In June 2018, Mercari Inc, the online marketplace operator, raised approximately USD 1.2 billion dollars via an IPO on the TSE’s Mothers market. The company was founded in 2013 and quickly became the country’s default online marketplace for selling and buying used goods. The company has a subsidiary called Merpay, providing mobile payment apps, which is registered as a funds transfer service provider (“FTSP”) under the Payment Services Act (the “PSA”).

## 3 Fintech Regulation

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

Apart from the regulations applicable to Crypto Asset Exchange Services (“CAES”) and Electronic Payment Intermediate Services, there is no regulatory framework in Japan relating specifically to fintech businesses. Depending on the services provided by fintech companies, however, they may be subject to existing financial regulations. These regulations include, among others, requirements to obtain applicable authorisation in the form of licencing or registration. A firm (including an overseas firm) wishing to undertake regulated activities in Japan is required to obtain applicable authorisation from the competent Japanese financial regulator, which may be the Financial Services Agency (“FSA”) or one of the Local Financial Bureaus to which

the FSA has delegated part of its authority. It should be noted that if an entity conducts solicitation in Japan for the use of its services, such solicitation activities, even if conducted from overseas, would generally be deemed to be conducted in Japan.

Money transfer services are regulated under the Banking Act and other legislations applicable to other depository institutions. These legislations require those wishing to provide such services to obtain the requisite licence from the FSA. An exception to this is that funds transfer services (“FTS”) not involving more than JPY one million per transfer may be provided if a firm undergoes registration as a FTSP under the PSA.

Aiming to facilitate more use of cashless payments, a bill to amend the PSA was passed by the Diet on June 5, 2020, and is expected to come into effect within one year from June 12, 2020 (being the date of promulgation of the revised PSA (“Revised PSA”). The Revised PSA classifies FTS into the following: (1) FTS involving remittances exceeding JPY one million per transaction (“Category 1 FTS”); (2) FTS that correspond to the FTS currently contemplated in the PSA (“Category 2 FTS”); and (3) FTS involving remittances of small amounts of several tens of thousands of yen (“Category 3 FTS”). Under the Revised PSA, a Category 1 FTS provider is required to obtain the FSA’s authorisation to operate and comply with a stricter code of conduct than that applicable to a Category 2 FTS provider. A Category 1 FTS provider must transfer funds without delay after its receipt of funds from a customer. The requirements applicable to a Category 2 FTS provider will remain largely the same as those currently applicable to an FTS provider. A Category 3 FTS provider may operate as long as it is registered with the FSA, and is subject to a more relaxed code of conduct than a Category 2 FTS provider.

An issuer of prepaid payment instruments, including e-money, is required to comply with applicable rules under the PSA. Where a prepaid payment instrument is only usable for payments to the issuer for its goods or services, such issuer will not be required under the PSA to undergo any registration, although they would still have to comply with certain notice requirements. On the other hand, issuers of prepaid payment instruments that are usable not only for payments to the issuer for its goods or services, but also for payments to other parties designated by the issuer (“Third-Party Businesses”), will be required to undergo registration as an “issuer of prepaid payment instruments” under the PSA.

It is worth noting that an online payment instrument can be considered either a “Funds Transfer” system, a “Prepaid Payment Instrument”, a “Crypto Asset” (“CA”), or an instrument of some other kind. As the bounds of each definition are not easy to distinguish, consultation with legal or other advisers is recommended if an entity wishes to undertake business related to online payments in Japan.

The Banking Act regulates Electronic Payment Intermediate Service Providers and facilitates open API. Electronic Payment Intermediate Service Providers are defined sufficiently broadly to include intermediaries between financial institutions and customers, such as entities using IT to communicate payment instructions to banks based on entrustment from customers, or entities using IT to provide customers with information about the financial accounts they hold with banks. Entities providing financial account aggregation services are also categorised as Electronic Payment Intermediate Service Providers. They are required to register with the FSA in order to provide these services.

### 3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

Yes, there are regulations specifically directed at CAs under the



PSA. CA derivatives and digital securities, on the other hand, are regulated under the FIEA. Regulations on CAs came into force on April 1, 2017. In June 2019, the PSA was further amended to introduce stricter regulations applicable to CA, for purposes of enhancing customer protection. The amended PSA came into force on May 1, 2020. In June 2019, the FIEA was also amended to include specific regulations on CA derivatives and digital securities. The amended FIEA similarly came into force on May 1, 2020.

### CA regulations

CAs are currently referred to as Virtual Currencies under the current PSA, but will be renamed CAs. However, the substance of the relevant definition will remain the same. Most of the so-called payment tokens and utility tokens would fall within the definition of CA.

CAES is defined to include any of the following acts carried out as a business:

- (i) the sale and purchase of CAs using fiat currencies or the exchange of CAs for other CAs;
- (ii) intermediary, agency or delegation services in respect of the acts listed in item (i) above;
- (iii) management of customers' money in connection with the acts listed in items (i) and (ii) above; or
- (iv) management of CAs for the benefit of another person.

As a consequence of this definition, not only are CA exchanges regulated as CAES providers ("CAESP(s)") under the PSA, but also most ICO token issuers. As a result, a token issuer must, as a general rule, be registered as a CAESP if the token sale is targeted to residents in Japan. Notwithstanding the foregoing, a token issuer does not need to undergo registration as a CAESP if it has completely outsourced its token sales to an existing CAESP in Japan.

Under the current PSA, it is generally understood that the mere act of managing customers' CAs and transferring such CAs to addresses designated by customers ("CA Custody Service") does not constitute a CAES. However, under the amended PSA, CA Custody Services will constitute a CAES because of the addition of "management of crypto assets for the benefit of another person" to the definition of CAES. Accordingly, a custodial wallet service provider must undergo registration as a CAESP if its wallet service is provided to residents in Japan.

A CAESP is required to manage customers' money separately from its own money, and to entrust customers' money to a trust company or some other similar entity. A CAESP is required to manage the CAs of customers ("Entrusted CA(s)") separately from its own CAs. In addition, a CAESP is required to manage 95% or more of the value of total Entrusted CAs with full-offline wallets or by other technical means with a level of safety equivalent to the level of safety provided by full-offline wallets.

### CA derivatives

Derivative transactions related to CAs are subject to regulation under the amended FIEA.

Provision of services in respect of over-the-counter ("OTC") CA derivative transactions or acting as an intermediary or broker in relation thereto constitutes Type I Financial Instruments Business under the amended FIEA. Accordingly, a company engaging in these transactions will need to undergo registration as a Type 1 Financial Instruments Business Operator ("Type 1 FIBO"). Under the amended FIEA, a Type 1 FIBO that provides its customers with services in respect of OTC CA derivative transactions is subject to various rules of conduct under the FIEA. It is noteworthy that the amended FIEA introduced strict leverage ratio regulations. If a Type 1 FIBO engages in CA derivative transactions, the amount of margin to be deposited by a customer must not fall below (i) 50% of the amount of

CA derivative transactions (i.e., the leverage ratio will be up to two times) if the customer is an individual, or (ii) the amount of CA derivative transactions, multiplied by the CA risk assumption ratio based on the historical volatility specified in the relevant public notice, if the customer is a corporation.

### Digital securities

The FIEA has conventionally classified securities into: (i) traditional securities, such as shares and bonds ("Paragraph 1 Securities"); and (ii) contractual rights such as trust beneficiary interests and collective investment scheme interests ("Paragraph 2 Securities"). Paragraph 1 Securities are subject to relatively stricter requirements in terms of disclosure and licensing (i.e., registration) as they are highly liquid. Paragraph 2 Securities, on the other hand, are subject to relatively less stringent requirements as they are less liquid. However, securities issued through electronic data processing systems, such as blockchain, are expected to be highly liquid, regardless of whether they are Paragraph 1 or Paragraph 2 Securities. For this reason, the amended FIEA introduces a new regulatory framework for securities that are transferable through electronic data processing systems. Under the amended FIEA, securities transferable by electronic data processing systems are classified into the following three categories:

- (i) Paragraph 1 Securities, such as shares and bonds that are transferable through electronic data processing systems ("Tokenised Paragraph 1 Securities");
- (ii) contractual rights, such as trust beneficiary interests and collective investment scheme interests, conventionally categorised as Paragraph 2 Securities, that are transferable through electronic data processing systems (referred to as electronically recorded transferable rights ("ERTRs")); and
- (iii) contractual rights, such as trust beneficiary interests and interests in collective investment schemes, conventionally categorised as Paragraph 2 Securities, that are transferable through electronic data processing systems but are limited to some extent in terms of their negotiability ("Non-ERTR Tokenised Paragraph 2 Securities").

An Issuer of Tokenised Paragraph 1 Securities or ETRTs is in principle required, upon making a public offering or secondary distribution, to file a securities registration statement and issue a prospectus. A person who engages in the business of the sale, purchase or handling of the public offering of Tokenised Paragraph 1 Securities or ETRTs is required to be registered as a Type I FIBO. In light of the higher degree of freedom in designing Tokenised Paragraph 1 Securities or ETRTs and the higher liquidity of these securities, a Type 1 FIBO that handles these digital securities will be required to control risks associated with digital networks, such as blockchain, used for digital securities.

### 3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

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

In June 2018, the Headquarters for Japan's Economic Revitalization, under the Cabinet Secretariat, opened a cross-governmental one-stop desk for a regulatory sandbox in Japan (the "Regulatory Sandbox") within the Japan Economic Revitalization Bureau. The Regulatory Sandbox can be used by

Japanese as well as overseas companies, and enables companies that apply and receive approval for projects not yet covered by existing laws and regulations to carry out demonstrations under certain conditions without the need for legal amendments. There are no limitations on the types of businesses eligible to apply for participation in the Regulatory Sandbox. However, projects relating to AI, IoT, big data and blockchain are explicitly mentioned in the basic policy regarding the Regulatory Sandbox as the most prospective and suitable business areas.

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

An overseas fintech company wishing to engage in regulated activities in Japan is subject to the same authorisation or registration requirements applicable to Japanese companies. It is important to note that a fintech business that is only based overseas and which deals with customers in Japan will likely be viewed as carrying out activities in Japan. In some cases, a fintech business established in another jurisdiction that wishes to provide its services to Japan residents will be required to establish a branch office or a subsidiary in Japan to obtain the relevant authorisation.

## 4 Other Regulatory Regimes / Non-Financial Regulation

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

Yes, the Act on the Protection of Personal Information (the “APPI”) is a principle-based regime for the processing and protection of personal data in Japan. The APPI generally follows the eight basic principles of the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, and applies to all private businesses, including fintech businesses. The amended APPI, which was promulgated in June 2020, will be fully implemented in 2022. The key amendments include: (i) the enhancement of an individual’s right to request that a business operator cease utilisation of, or delete, the individual’s personal information; (ii) the imposition of mandatory rules to report incidents of information leakage; (iii) the establishment of the concept of “Pseudonymously Processed Information” to accelerate innovation regarding information; (iv) the reinforcement of criminal sanctions; and (v) the enhancement and strengthening of restrictions on foreign business operators and the cross-border transfer of personal information.

Pursuant to the APPI, the Personal Information Protection Commission (the “PPC”) issues general administrative guidelines, and some governmental ministries also issue administrative guidelines that apply to specific industry sectors under their supervision. Fintech businesses should comply with the “Guidelines on Personal Information Protection in the Financial Industry” issued by the FSA.

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

The APPI is applicable to certain acts that are performed in

a foreign country. More specifically, many of the provisions of the APPI are applicable to the owner of personal information regardless of the owner’s location, if the owner uses or processes such personal information of an individual in Japan that is acquired in connection with the provision of goods or services to the individual. Under the APPI, personal data may not be transferred to any third party in a foreign country, in principle, without the consent of the person concerned. This restriction does not apply if a receiving third party is located in a foreign country that has personal data protection systems comparable to those in Japan (only EU member countries and the UK are recognised as such countries as of April 1, 2021), or if the receiving third party takes necessary measures to protect personal data comparable to the measures that should be taken by an entity under the APPI.

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

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

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

In November 2014, the Basic Cybersecurity Act was enacted, which is a basic framework law for cybersecurity. Under this act, the Japanese government must take measures for the implementation of cybersecurity policies including legislative, financial or taxation measures. Currently, there are several laws and regulations in Japan that can be used to tackle cyber-crimes, including, among others, the Unfair Competition Prevention Act, the Unauthorised Computer Access Prevention Act, the APPI and the Penal Code.

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

The Act on Prevention of Transfer of Criminal Proceeds (the “APTCP”) is the key anti-money laundering legislation in Japan. The APTCP requires financial institutions and other business entities specified in the act (“Specified Business Entities”) to adequately verify the identity of its customer upon commencement of certain types of transactions (“Specified Transactions”). If a fintech business is included in the scope of the Specified Business Entities, it must perform such verification. Most financial institutions including FTSPs and CAESPs are specified as the Specified Business Entities under the APTCP, while issuers of prepaid payment instruments are not designated under Specified Business Entities. The Specified Transactions vary depending on the Specified Business Entities. If a transaction falls within certain high-risk categories, the APTCP requires the Specified Business Entities to conduct enhanced customer due diligence.

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

There is no other legislation in Japan which is aimed specifically

at the fintech sector. Any additional relevant regulations would likely be specific to the sector in which a particular fintech business operates.

## 5 Accessing Talent

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

In regard to either hiring or dismissal, it should be noted that, under Japanese law, employers are prohibited from discriminating against employees with regard to wages, working hours and any other terms of employment because of nationality, creed and social status. With respect to hiring, there are two types of employment contracts in Japan: (i) those with a definite term; and (ii) those with an indefinite one. As a general rule, the term of a definite term employment contract shall not exceed three years with the exception of employees that have special knowledge or expertise. Please note that, unless there is an objectively justifiable cause for the non-renewal, and such non-renewal is socially acceptable, a definite term employment contract will be, upon the employee's request, deemed to be renewed as an employment contract with an indefinite term under the same terms and conditions of employment as the definite term employment contract if a certain condition is met. Please also note that a definite term contract employee whose contract period totals over five years by renewal(s) may convert the employment contract to an indefinite term employment contract by requesting this to the employer.

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

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

Employers are required to pay at least the minimum wage stipulated by the law. As a general rule, (i) the wage must be paid at least monthly on a particular date, (ii) the payment must be in cash, in Japanese Yen, (iii) no amount can be deducted from the wage, and (iv) the wage must not be paid to anyone other than the employee. Employees are entitled to take at least one statutory holiday per week. The maximum working hours cannot exceed eight hours per day or 40 hours per week. An employer must give all employees that have worked 80% or more of the designated workdays in the preceding year a certain number of days of annual leave. In order to have employees work overtime or work during holidays, the employer is required to:

(i) execute an employee–employer agreement in writing on such overtime work with the labour union which represents a majority of employees or, if such union does not exist, with an employee who represents a majority of employees; and (ii) refer to the possibility of overtime work and work on statutory holidays in the Rules of Employment in advance. An employer is, in general, required to have the following two types of insurance for its employees: (i) Labour Insurance (Workers' Compensation Insurance and Unemployment Insurance); and (ii) Social Insurance (Health Insurance and Welfare Pension Insurance).

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

For foreign workers to visit and work in Japan, a highly skilled professional visa or working visa is necessary. Under the Japanese points-based system, foreign nationals recognised as “highly-skilled foreign professionals” will be given preferential immigration treatment. There are three categories of activities of highly-skilled foreign professionals: (i) advanced academic research activities; (ii) advanced specialised/technical activities; and (iii) advanced business management activities. The preferential treatment includes (i) permission for multiple purposes of activities, and (ii) a grant of a five-year period of stay, and so forth.

## 6 Technology

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

Fintech, or finance-related technology, may be protected by patents or copyrights. A patent is granted for inventions that are “highly advanced creations of technical ideas utilising the laws of nature” and that are industrially applicable. For instance, a patent may be granted for computer software, as either a product invention or process invention, provided the process can be implemented by hardware. The mathematical algorithm itself is not patentable. Business methods themselves are similarly unpatentable. However, a patent may be granted for business methods that are combined with computer systems or other devices. Productions in which thoughts or ideas are expressed in creative ways (and which fall within the literary, scientific, artistic or musical domain) can be protected as “works” under copyright. Databases that constitute creations by means of selection or systematic construction of information contained therein are protected as independent works. Computer programs may be protected as works if the manner in which instructions to the computer are expressed constitute creations.

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

Under Japanese patent law, a patent for an invention is owned by the inventor. Only a natural person can be the inventor originally entitled to file a patent for the invention. In respect of inventions created by an employee, the right to obtain a patent may be assigned to the employer in accordance with the employer's established rules, and the said employer may file the patent application as applicant to the extent that it has reasonably compensated its employee. The process for determining “reasonable value” may often be clarified in an agreement or the



Rules of Employment. Where the amount to be paid in accordance with the provision on “reasonable value” is found to be unreasonable, or where no provision setting forth the method for calculation such value exists, the amount of “reasonable value” will be determined by a court in light of the amount of profits that the employer stands to make from the working of the patent, the employer’s burden and contribution to the invention, its treatment of the employee, and any other circumstances relating to the invention. The authorship of a work created by an employee during the performance of his or her work duties for the employer is attributed to the employer. An author essentially obtains moral rights and copyright to a work. The moral rights of an author include the right to make the work public, the right to determine whether the author’s name will be indicated on the work, and the right to maintain integrity. The moral rights of an author are personal and exclusive to the author.

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

IP rights are territorial rights in principle. With that said, Japan has ratified the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Patent Law Treaty and the WIPO Copyright Treaty. Accordingly, foreign IP rights may be protected in Japan under these treaties.

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

IP may be exploited or monetised through (i) assignment, (ii) grant of security interest, or (iii) licensing. The formalities applicable to such transactions differ, depending on the IP rights involved. Rights in registered patents can be assigned to any party upon registration of the assignment. Copyrights and neighbouring rights can be assigned through an agreement, without registration, although registration would be necessary for perfection of the assignment. Rights in registered patents can be pledged for the benefit of any party upon its registration, which is required in order for the pledge to be valid and enforceable. Copyright and neighbouring rights can be pledged for the benefit of any party by way of an agreement without registration, although the pledge is capable of registration for perfection of the agreement. Exclusive and non-exclusive licences to IP rights are effective upon the creation of an agreement between the right holder and a licensee.



**Ken Kawai** has extensive experience advising financial institutions, fintech start-ups, investors and corporate clients on complex finance and financial regulatory matters. Ken focuses primarily on the fintech industry, and regularly advises fintech companies, financial institutions, international organisations and industry organisations on legal issues surrounding fintech, including the complex legal framework governing cryptocurrencies, and blockchain.

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