

## Trends and Developments

### *Contributed by:*

*Takaharu Totsuka, Keisuke Hatano and Tomoki Kashimura*

*Anderson Mori & Tomotsune see p.249*

### Three Classifications of Fund Transfer Services

#### *Overview*

On 6 March 2020, the Financial Services Agency (the FSA) submitted a bill to the Diet for the revision of the Payment Services Act (the PSA), which classified fund transfer services into three categories according to certain maximum limits on remittance amounts. The Bill passed on 5 June 2020. An amendment to the PSA, together with its subordinate regulations (ie, Enforcement Ordinance, Cabinet Office Ordinance and related Guidelines for Administrative Processes) came into effect on 1 May 2021. This article provides an overview of the new classification of Fund Transfer Service Providers (FTSPs), covering issues such as the maximum remittance amounts for each type thereof, licensing procedures, methods for preserving and managing user funds and measures to ensure there is no retention of user funds that are not likely to be used for fund transfer transactions. Please note that, in this article, we refer to the Enforcement Ordinance of the PSA as the “Enforcement Ordinance”, the Cabinet Office Ordinance on the Fund Transfer Service Providers as the “Cabinet Office Ordinance”, and the Guidelines for Administrative Processes (Vol. 3: Financial Companies; 14. FTSPs) as the “Guidelines”.

#### *Background of establishment of the types of fund transfer services*

Prior to the amendment, under the PSA, the maximum amount of money that an FTSP could process was equivalent to JPY1 million per transfer. However, while there were instances whereby a certain number of users required the processing of amounts that exceeded such remittance

limit, most existing FTSPs were handling remittances in the range of tens of thousands of yen per transaction, which was also the scale of the balance of most user funds per person. Therefore, the decision was made to divide FTSPs into three types and apply the appropriate level of regulations – neither too strict nor too lenient – with respect to each.

Hence, the PSA was revised to create the three types of fund transfer services (PSA, Article 36-2).

#### *Type I Fund Transfer Services*

##### *Definition*

“Type I Fund Transfer Services” means any fund transfer services that are not Type II or Type III Fund Transfer Services (PSA, Article 36-2, Paragraph 1). As described below, the maximum remittance amounts for Type II and Type III Fund Transfer Services are set at JPY1 million and JPY50,000 per transfer, respectively (Enforcement Ordinance, Article 12-2, Paragraphs 1 and 2). Accordingly, Type I Fund Transfer Services relate to fund transfer transactions that exceed JPY1 million per transfer. While Type I Fund Transfer Services may include transfers of less than JPY1 million each, as long as those are processed using a Type I FTSP’s account (ie, unless a registration as an FTSP engaged in Type II Fund Transfer Service (Type II FTSP) or an FTSP engaged in Type III Fund Transfer Services (Type III FTSP) is separately obtained and fund transfer transactions are carried out based on those qualifications in a separate account from the Type I accounts), they are subject to Type I Fund Transfer Services regulations, includ-

ing with respect to the retention of funds, as described below.

#### *Retention of funds*

A Type I FTSP is not allowed to assume any obligation vis-à-vis its users with respect to Type I Fund Transfer Services whereby the amount of funds to be transferred, the day on which the funds are to be transferred and the identity of the receiving party to which the funds are to be transferred are not clear (PSA, Article 51-2, Paragraph 1; Cabinet Office Ordinance, Article 32-2, Paragraph 1).

Additionally, the Type I FTSP is not allowed to assume any obligations for transactions lasting beyond the period necessary in order to complete the administrative process relating to the transfer of funds (PSA, Article 51-2, Paragraph 2). According to the Guidelines, the “period necessary in order to complete the administrative process relating to the transfer of funds” means the time that is operationally and technically required, calculated while taking into consideration the minimum amount of time necessary to process each transaction, such as AML/CFT, communications with overseas bases and banks and remittance to bank accounts.

Furthermore, providing services whereby users of Type I Fund Transfer Services perform the following is deemed an assumption of obligations beyond the period necessary for carrying out the administrative process in connection with the transfer of funds:

- withdraw from ATMs funds that were deposited beforehand with a card issued by the Type I FTSP; or
- prepay funds to the Type I FTSP, receive a money order in an amount equivalent to prepayment, and send the money order to a third party who then cashes such certificate.

These activities constitute a potential violation of Article 51-2, Paragraph 2 of the PSA. In addition, when funds reach the person they are remitted to, certain measures are required in order to avoid the unnecessary retention of funds prior to the completion of the transaction, such as making a direct deposit into a bank account previously registered by such person.

As illustrated above, since the funds deposited by users must be immediately transferred and immediately paid out to the person receiving them, providing fund transfer services in the form of wallet services is prohibited in the case of Type I FTSPs.

#### *Security deposits*

In order to meet the asset security obligation under the revised PSA, an FTSP can combine the three permitted methods of asset preservation: security deposits, guarantee agreements and trust agreements. If the FTSP selects the security deposit as its preservation method, it has to make a security deposit within the period specified in the Cabinet Office Ordinance for each type of fund transfer service it offers (PSA, Article 43, Paragraph 1, Items (i) and (ii)). For Type I Fund Transfer Services, it is required to make a security deposit for each business day in an amount equal to or higher than the highest amount required under the PSA. Such deposit must be executed within the period specified by the FTSP, but not exceeding two business days from the business day indicated above (Cabinet Office Ordinance, Article 11, Paragraph 1). The required amount is calculated each day, based on the outstanding liabilities (ie, the funds in the process of being transferred), which are assumed by the FTSP at a certain time of the day, as designated by it.

#### *Authorisation system*

The PSA stipulates that, when an entity registered as an FTSP intends to operate Type I Fund

Transfer Services, it must establish a business implementation plan and obtain authorisation (PSA, Article 40-2, Paragraph 1). Among other factors, a business implementation plan should include the “maximum amount” if “the Type I FTSP has a plan to set the maximum amount of funds to be transferred through each fund transfer transaction” (PSA, Article 40-2, Paragraph 1, Item (i)) and the “method of managing the electronic data processing system used for processing fund transfer transactions” (Item (ii) of the same Paragraph).

## *Type II Fund Transfer Services*

### *Definition*

“Type II Fund Transfer Services” entail processing fund transfers of amounts not exceeding JPY1 million (excluding Type III Fund Transfer Services) (PSA, Article 36-2, Paragraph 2; Enforcement Ordinance, Article 12-2, Paragraph 1).

### *Retention of funds*

The PSA requires an FTSP to take measures to ensure that it does not retain any funds received from users for purposes other than fund transfer transactions (PSA, Article 51). To satisfy this requirement, the Cabinet Office Ordinance stipulates that, with respect to Type II Fund Transfer Services, if the amount of obligations for fund transfer transactions owed to each user exceeds JPY1 million, the FTSP must establish a system to verify that those funds, as used by the creditors of such obligations, are indeed intended for fund transfer transactions related to Type II Fund Transfer Services (Cabinet Office Ordinance, Article 30-2, Paragraph 1).

When determining the relationship between user funds and fund transfer transactions, the Guidelines require the FTSP to engage in a comprehensive analysis of the following aspects with respect to each user:

- the amount being received;
- the acceptance period;
- the remittance record; and
- the purpose of use.

For example, when recognising that the amount received in an account exceeds the JPY1 million threshold, the FTSP must verify whether a fund transfer transaction is indeed scheduled to take place and whether the larger size of funds is retained as compared with the relevant user’s transaction history. If the conclusion is that the funds are unlikely to be used for fund transfer transactions, the FTSP must transfer the funds in excess of those likely to be used for fund transfer transactions to the user’s pre-registered bank account. In addition, the FTSP is also required to return to the user those funds that are equivalent to or below JPY1 million, or to otherwise take measures to ensure it does not retain funds, if they are not intended to be used for fund transfer transactions. Hence, wallet services are subject to restrictions even when operating below the JPY1 million threshold.

### *Security deposits*

If a Type II FTSP selects security deposits as its preservation method, it is required – for each period, as specified by it, but not exceeding one week – to make a security deposit in an amount equal to or higher than the highest amount required under the PSA. Such deposit must be executed within the period specified by the FTSP, but not exceeding three business days from the end of the relevant period (Cabinet Office Ordinance, Article 11, Paragraph 2). The required amount is calculated each day within the up-to-one week specified period, based on the outstanding liabilities (ie, the funds in the process of being transferred), which are assumed by the FTSP at a certain time of the day, as designated by it.

### *Type III Fund Transfer Services*

#### *Definition*

“Type III Fund Transfer Services” entail processing fund transfers of amounts not exceeding JPY50,000 (PSA, Article 36-2, Paragraph 3; Enforcement Ordinance, Article 12-2, Paragraph 2).

#### *Retention of funds*

When assuming obligations in connection with, and engaging in, Type III Fund Transfer Services, FTSPs are prohibited from assuming any obligations exceeding JPY50,000 for each user thereof (PSA, Article 51-3; Enforcement Ordinance, Article 17-2). The Guidelines require a Type III FTSP to take measures to ensure it does not engage in transactions exceeding the JPY50,000 maximum amount for both remittance per transaction and retention per user; therefore, a Type III FTSP must establish a system that ensures no fund transfer transactions exceeding JPY50,000 are accepted from users, and a system to ensure that the obligations owed to each of the users do not exceed such threshold. For example, if a user transfers JPY45,000 to another user who already has JPY35,000 in their account, the resulting balance of the recipient (if received in the account in full) will be JPY80,000; this would breach the JPY50,000 ceiling for the amount that may be retained and, therefore, preventative measures would be called for. Examples of such measures provided in the Guidelines include prohibiting the remittance when the sum in the recipient’s account and the transferred amount exceed JPY50,000 in total or entering into an agreement to automatically transfer JPY30,000 – the excess of the maximum threshold in our example – to a bank account of the remittee.

#### *Security deposit*

If a Type III FTSP selects security deposit as its preservation method, it is required – for each period, as specified by it, but not exceeding one

week – to make a security deposit in an amount equal to or greater than the highest required amount under the PSA. Such deposit has to be made within a period specified by the FTSP, but not exceeding three business days from the end of the relevant period (Cabinet Office Ordinance, Article 11, Paragraph 2). The required amount is calculated each day within the specified up-to-one week period based on the outstanding liabilities (ie, the funds in the process of being transferred), which are assumed by the FTSP at a certain time of the day, as designated by it.

#### *Other preservation methods*

A Type III FTSP may be exempted from asset preservation requirements (using security deposits, guarantee or trust agreements) by submitting a notification indicating its bank deposit and savings management ratio (ie, the ratio of the amount of outstanding liabilities consisting of funds in the process of being transferred that are segregated and managed separately by bank deposits and savings). In such cases, the FTSP is required to manage, through a management method for deposits and savings, an amount of money that is at least equal to the amount calculated by multiplying the amount of outstanding liabilities, which consist of funds in the process of being transferred, by the bank deposit and savings management ratio (PSA, Article 45-2, Paragraph 1). Assuming the bank deposit and savings management ratio is 100%, the Type III Fund Transfer Services can function without using methods such as security deposits, by segregating bank deposits and savings. In such cases, the Type III FTSP is required to provide information to users, by delivering documents or other appropriate methods, regarding the bank deposit and savings management ratio and the fact that, upon bankruptcy, they would not be deemed preferred creditors of the FTSP (Cabinet Office Ordinance, Article 29-2, Item (iv)).

## *Required measures applicable to all types of fund transfer services*

### *Measures required when engaging in two or more types of fund transfer services*

An FTSP engaged in two or more types of fund transfer services must take measures to ensure users can readily obtain information regarding the amount of obligations owed to each user by the FTSP with respect to each type of fund transfer service and such user's status therefor (Cabinet Office Ordinance, Article 30-4, Paragraph 1; Guidelines, VI-1-1(1)(i)). In addition, when an FTSP engaged in both Type I and Type II Fund Transfer Services receives funds related to Type II Fund Transfer Services from users and assumes obligations therefor, it is required to take measures to prevent such obligations from falling within the category of obligations in connection with fund transfer transactions related to Type I Fund Transfer Services (Paragraph 2 of the same Article).

### *Measures to ensure there is no retention of funds that are not used for fund transfer transactions*

An FTSP must return to users funds received and deemed not intended to be used for fund transfer transactions, or otherwise take measures to ensure it does not retain, such funds (Cabinet Office Ordinance, Article 30-2, Paragraph 2). More specifically, according to the Guidelines, there has to be a specified method to return funds that are deemed not intended to be used for fund transfer transactions to the relevant users. If any measure other than a bank transfer to a registered bank account is taken to return funds, the FTSP has to ensure that such method is appropriate from the perspective of expediency and convenience; furthermore, the FTSP has to put in place a system to receive advance information from users that would be necessary in order to return funds, based on the specific method selected.

In this connection, the payment of interest on the balance of users' funds would be deemed to be engaging in the solicitation of user funds that is unrelated to the purpose of fund transfer transactions and would be in violation of the deposit regulations under Article 2, Paragraph 1 of the Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates.

### *Measures to prevent user funds from being used as funds for loans*

An FTSP must take measures to prohibit the use of funds received from users for loans, etc (Cabinet Office Ordinance, Article 30-3). According to the Guidelines, the following steps must be taken:

- internal rules stipulating that funds received from users and funds intended for loans are managed in separate deposit accounts or, if managed in the same bank account, there is a method to reasonably assume and verify that the funds received from the users are not being used for loans;
- timely and appropriate reviews to ensure that the funds received from users and funds intended for loans are clearly separated in the manner indicated above, and that no financial arrangements are made between the accounts managing the two; and
- in order to prevent errors and fraud, implementing measures such as prohibiting the personnel in charge of managing funds received from users to concurrently serve as persons in charge of managing funds that are intended for loans.

*Contributed by: Takaharu Totsuka, Keisuke Hatano and Tomoki Kashimura, Anderson Mori & Tomotsune*

**Anderson Mori & Tomotsune** is a full-service law firm formed through the combination of three leading law firms in Japan: Anderson Mori, one of the largest international firms in Japan which has been known for serving overseas companies doing business in Japan since the early 1950s; Tomotsune & Kimura, well known for its expertise in international finance transactions; and Bingham Sakai Mimura Aizawa, a premier international insolvency/restructuring

and crisis-management firm. It is proud of its long tradition of serving the international business community, and of its reputation as one of the largest full-service law firms in Japan. The firm's combined expertise enables it to deliver comprehensive advice on virtually all legal issues related to corporate transactions. The majority of its lawyers are bilingual and experienced in drafting and negotiating across borders and around the globe.

## AUTHORS



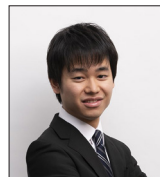
**Takaharu Totsuka** is a partner at Anderson Mori & Tomotsune and has been involved with various types of financial transactions, including financial regulatory issues in relation to

payment services and e-commerce as well as banking and securities, securitisations of real properties and receivables, private finance initiatives and syndicated loans to operating companies and investment corporations. He has been a member of the Financial Law Board since January 2017.



**Keisuke Hatano** has been involved in a number of significant finance transactions since joining the firm in 2012. He has extensive experience in advising financial institutions

and fintech companies on regulatory matters. In addition to his professional experience at the firm, Keisuke previously worked for the Financial Services Agency, where he was mainly engaged in two separate processes of amending the Banking Act in 2016 and 2017 with the aim of creating pro-fintech environments for a second consecutive year.



**Tomoki Kashimura** is a junior associate and has been involved in a wide range of corporate issues since joining the firm in 2018, including domestic and international financial transactions.

## **Anderson Mori & Tomotsune**

Otemachi Park Building  
1-1-1 Otemachi  
Chiyoda-ku  
Tokyo 100-8136  
Japan

Tel: +81 3 6775 1109  
Fax: +81 3 6775 2109  
Email: [takaharu.totsuka@amt-law.com](mailto:takaharu.totsuka@amt-law.com)  
Web: [www.amt-law.com](http://www.amt-law.com)

**ANDERSON  
MŌRI &  
TOMOTSUNE**