

GLI GLOBAL
LEGAL
INSIGHTS

Fintech

2022

Fourth Edition

Contributing Editors: **Richard B. Levin & Kevin Tran**

glg global legal group

CONTENTS

Preface	Richard B. Levin & Kevin Tran, <i>Nelson Mullins Riley & Scarborough, LLP</i>	
Expert analysis chapters	<i>Crypto pennies saved, crypto pennies lost</i> Richard B. Levin & Kevin Tran, <i>Nelson Mullins Riley & Scarborough, LLP</i>	1
	<i>Special considerations for foreign-owned U.S. fintech startups</i> Adrian Pandev, Michael Hayes & Matt Bush <i>Pandev Law, LLC</i>	20
Jurisdiction chapters		
Australia	Peter Reeves, Simon Barnett & Alexa Bowditch, <i>Gilbert + Tobin</i>	29
Canada	Brigitte Goulard, Konata Lake & Molly Reynolds, <i>Torys LLP</i>	40
Denmark	Morten Schultz, Kasper Laustsen & Christian Blicher Møller, <i>Bruun & Hjejle Advokatpartnerselskab</i>	57
France	Hubert de Vauplane & Judith Smadja, <i>Kramer Levin Naftalis & Frankel LLP</i>	66
Hungary	Dr. Márton Kovács, Dr. András Zsirai & Dr. Roland Osvald, <i>Moore Legal Kovács</i>	80
India	Vaibhav Kakkar, Sahil Arora & Gangesh Varma, <i>Saraf and Partners</i>	88
Ireland	Joe Beashel & Ian O’Mara, <i>Matheson</i>	97
Italy	Massimo Donna & Nicola Louise Jenvey, <i>Paradigma – Law & Strategy</i>	103
Japan	Ken Kawai, Shunsuke Aoki & Keisuke Hatano, <i>Anderson Mōri & Tomotsune</i>	110
Korea	Michael Chang, Hyun-il Hwang & Minseok Yu, <i>Shin & Kim LLC</i>	121
Luxembourg	Jean-Louis Schiltz & Nadia Manzari, <i>Schiltz & Schiltz S.A.</i>	130
Malaysia	Mohamed Ridza Abdullah & Mohamad Nazran Basirun, <i>Mohamed Ridza & Co</i>	144
Mexico	Alfredo Lazcano & Andrea Avedillo, <i>Lazcano Sámano, S.C.</i> Sergio Chagoya Díaz, <i>Santamarina y Steta, S.C.</i>	160
Netherlands	Lous Vervuurt & Paul van de Ven, <i>BUREN N.V.</i>	164
Nigeria	Ebimobowei Jikenghan, Oluwaseun Oyekan & Fidelis Oguche, <i>G. Elias</i>	172
Norway	Ole Andenæs, Snorre Nordmo & Karoline Angell, <i>Wikborg Rein Advokatfirma AS</i>	182
Singapore	Lim Chong Kin & Benjamin Gaw, <i>Drew & Napier LLC</i>	191
Spain	Alfonso López-Ibor Aliño, Olivia López-Ibor Jaume & Alejandro Andrés Sosa Röhl, <i>López-Ibor Abogados, S.L.P.</i>	205
Switzerland	Dr. Alexander Vogel, Dr. Reto Luthiger & Lorenzo Pierallini, <i>MLL Meyerlustenberger Lachenal Froriep AG</i>	218
Taiwan	Robin Chang & Eddie Hsiung, <i>Lee and Li, Attorneys-at-law</i>	227

Tanzania	Doxa Crispin Mbapila, Elizabeth Kiguha & Beatrice Mihambo, <i>Endoxa Law</i>	235
Thailand	Sappawit Jansupareng & Thaya Uthayophas, <i>Weerawong, Chinnavat & Partners Ltd.</i>	242
United Arab Emirates	Nadim Bardawil, Marina El Hachem & Hala Harb, <i>BSA Ahmad Bin Hezeem & Associates LLP</i>	256
United Kingdom	David Brennan, Sushil Kuner & Samantha Holland, <i>Gowling WLG (UK) LLP</i>	265
USA	Andrew Lorentz & Thomas Kost, <i>Davis Wright Tremaine LLP</i>	278
Vietnam	Ha Thi Dung, Kenji Nishio & Nirmalan Amirthanesan, <i>MHM Vietnam</i>	294

Japan

Ken Kawai, Shunsuke Aoki & Keisuke Hatano
Anderson Mōri & Tomotsune

Approaches and developments

There has been a series of significant Fintech-related changes to the regulations in Japan. We note that most of those changes are driven by the regulators' intention to stimulate Fintech business and innovation in legacy financial institutions in Japan. Additionally, regulators have had to deal with various consumer protection issues that have arisen in Japanese Fintech industries, which resulted in their decision to strengthen the regulations governing emerging Fintech businesses in order to address new risks for consumers arising from the new services. We set forth below typical cases of this regulatory trend in Japan.

Crypto assets and digital securities

Japan introduced a regulatory framework for crypto assets in April 2017. Crypto asset exchange businesses became regulated under the Payment Services Act (the "PSA"). In 2019, the regulatory framework for crypto assets was significantly amended to (i) enhance customer protection by introducing stricter regulations applicable to crypto assets, and (ii) include specific regulations on crypto asset derivatives and digital securities. The new regulatory framework entered into force on May 1, 2020. A notable development was the 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. Please refer to the section "**Key regulations and regulatory approaches**" below for details.

Although not driven by the regulatory changes, non-fungible token ("NFT") related businesses have been popular since late 2020, especially in the online gaming sector. In addition, content holders, digital-art artists and advertising agencies have rushed to this new market.

Stable coins

Under the regulatory framework of Japan, stable coins that can be redeemable in fiat currencies have been distinguished from crypto assets, regardless of whether a specific stable coin is blockchain-based or not. Such stable coins fall within the scope of Currency Denominated Assets and therefore are basically regulated under the conventional funds transfer regime. In March 2022, the Financial Services Agency of Japan (the "FSA") submitted a bill amending the PSA to the Diet, which endorsed this classification and clarified that an issuer of fiat-backed stable coins is required to be a bank, Funds Transfer Service Provider or a trust company that is licensed in Japan. In addition to that, the bill is also designed to introduce a new licensed business category termed "Electronic Payment Instruments Business", for fiat-backed stable coins exchange service providers for the case where the issuer and exchange service provider of a stable coin are separate entities. Please refer to the section "**Key regulations and regulatory approaches**" below for details.

One-stop financial services intermediary

The rapid development of information and communication technologies in recent years has enabled entrepreneurs to create and offer innovative services to the financial industry. In particular, there has been a growing need for one-stop online platforms enabling access to financial services of various kinds. There has also been a rise in demand for convenient cashless payment services. Against this backdrop, the FSA submitted a bill to the Diet in March 2020, which was passed by the Diet in June 2020. The bill is designed, amongst others, to introduce a new category of business termed “financial services intermediary business”. We understand that the introduction of a licence for a one-stop online platform for various kinds of financial services is a unique approach, even from a global perspective. The new regulatory framework entered into force as of November 22, 2021. Please refer to the section “**Key regulations and regulatory approaches**” below for details.

Fintech offering in Japan

In Japan, crypto asset-based businesses, cashless payment or mobile payment services, financial account aggregation services, robo-advisors, and crowdfunding are relatively active Fintech offerings. Meanwhile, other innovations such as peer-to-peer lending and Insurtech have yet to penetrate the Japanese market.

It is notable that an increasing number of companies have entered into or expanded their businesses in the mobile payment market in the past several years, and they are currently facing great competition.

Mobile payment service providers in Japan have been attracting interest from an M&A and investment perspective. For example, in September 2018, PayPal Holdings announced the acquisition of Paidy Inc., a leading Japanese buy now, pay later (“BNPL”) service platform, for approximately \$2.7 billion (JPY 300 billion), to enhance its business in Japan. This transaction is the largest-ever M&A that has targeted a Japanese Fintech company.

From a legal perspective, these mobile payment services (including QR code payment services) fall within three models: prepaid; direct debit payment; and deferred payment. The prepaid model requires a user to transfer funds from a bank account prior to a payment. The deferred payment model includes, in addition to traditional credit card services, emerging BNPL services under which issuing cards prior to the payment is not necessary. Both models are relatively common in Japan, and the direct debit payment model is less popular but has been expanding recently. QR code payment services can come under any of these three models. In actual fact, there exists QR code payment services corresponding to each model in Japan. As different regulations apply to each model, entities seeking to undertake business related to mobile payment services (including QR code payments services) in Japan are recommended to consult a regulatory specialist for compliance purposes.

Since 2020, digital securities businesses have been steadily gaining ground. As a result of the new regulatory framework which has clarified the regulations on digital securities (see section “**Key regulations and regulatory approaches**”), quite a number of financial institutions are entering into this new market. In 2021, digital securities businesses have continued to gain stronger momentum. Their main focus is on digital corporate notes and tokenised equity interests of real estate funds. For instance, on April 19, 2021, SBI Securities made its first offering of digital corporate bonds in Japan. Another example is the first public offering in Japan of asset-backed security tokens by a subsidiary of Kenedix, one of the leading real estate companies in Japan. The asset-backed security tokens are based on a beneficiary certificate issuance trust scheme utilising a blockchain platform. The platform

in the offering was provided by Mitsubishi UFJ Trust and Banking Corporation and the offering was underwritten by Nomura Securities Co., Ltd. and SBI Securities Co., Ltd.

It is also worth noting that the facilitation of Open APIs has resulted in embedded finance services becoming a new trend in Japan. In 2020, Japan Airlines and Culture Convenience Club, which is a major movie rental and bookshop chain, commenced the provision of banking services to its customers. From a legal perspective, they are bank agents of SBI Sumishin Net Bank registered under the Banking Act, but the user interface for their banking services are completely customised for each of them. Yamada Denki, which is one of the major electronic appliance chains in Japan, has also revealed its plan to provide banking services by using the embedded finance model. In 2021, NTT Docomo, which is the largest mobile carrier in Japan, announced a planned collaboration with MUFG bank, in which NTT Docomo will provide its users with deposit accounts under its own name.

Regulatory and insurance technology

Regtech (Regulatory Technology) has not yet come to Japan; however, the FSA officially announced in its Assessments and Strategic Priorities 2018 that it would enhance Regtech and Suptech (Supervisory Technology) in Japan. One of the recent legislative changes in this area is that, in 2018, the subordinate regulations of the Act on the Prevention of Transfer of Criminal Proceeds were amended in order to finally make several methods of e-Know-Your-Customers (e-KYCs) available in Japan.

Insurtech (Insurance Technology) appears to have been adopted mainly by traditional insurance companies in Japan. For example, in 2021, Aioi Nissay Dowa Insurance released its “embedded” finance service, which allows a business operator to concurrently provide its users with an option to enter into an insurance agreement when the users enter into a service agreement with the business operator.

Regulatory bodies

There are several relevant regulatory bodies for Fintech businesses in Japan.

A firm (including an overseas firm) that wishes to undertake regulated activities in Japan is required to obtain the applicable licence from Japanese financial regulators, the FSA or one of the Local Financial Bureaus that the FSA has delegated a part of its authority to, except for services related to deferred payments, which require authorisation from the METI.

Fintech-related laws such as the Banking Act, the PSA and the Installment Sales Act incorporate regulations addressing both prudential supervision and consumer protection. As a result, from the perspective of ensuring both prudential supervision and consumer protection, a single regulator is in charge of enforcing each of the said acts.

Key regulations and regulatory approaches

Crypto asset-related services

Crypto asset exchange services

Regulations on crypto assets came into force on April 1, 2017. The PSA was amended to introduce registration requirements for “crypto asset exchange service providers”. In June 2019, the PSA was further amended to enhance customer protection by introducing stricter regulations applicable to crypto assets. The amended PSA came into force on May 1, 2020.

For the purposes of the PSA, “crypto asset” is defined 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, where such proprietary value may be (a) sold to or purchased from an unspecified person, provided such sale and purchase is recorded on electronic or other devices through electronic means, and (b) transferred through an electronic data processing system; or
- ii. proprietary value that may be exchanged reciprocally for such proprietary value specified in the preceding item with an unspecified person, where such proprietary value may be transferred through an electronic data processing system.

Most of the so-called payment tokens and utility tokens would fall within the definition of a crypto asset.

Crypto asset exchange services (“CAES”) have been defined to include any of the following acts carried out as a business:

- i. the sale/purchase of crypto assets or exchanges for other crypto assets;
- ii. intermediary, agency or delegation services for the acts listed in i. above;
- iii. the management of users’ money in connection with the acts listed in i. and ii.; or
- iv. the management of crypto assets for the benefit of another person.

As a consequence of this definition, not only typical crypto asset exchanges, but also so-called Over-the-Counter (“OTC”) brokers, are regulated as CAES providers under the PSA. Moreover, most Initial Coin Offerings (“ICOs”) or token sales fall within the definition of CAES. As a result, a token issuer must, as a general rule, be registered as a CAES provider if the token sale (i.e., the ICO) is targeted at residents in Japan. Notwithstanding the foregoing, a token issuer does not need to undergo registration as a CAES provider if the issuer has completely outsourced its token issuance to a reliable ICO platform provider that is registered as a CAES provider.

It should be noted that, as a result of the 2019 amendment to the PSA, managing customers’ crypto assets and transferring such crypto assets to addresses designated by customers constitutes a CAES because “managing crypto assets for the benefit of another person” has been included in the definition. Accordingly, a custodial wallet service provider must undergo registration as a CAES provider if its wallet service is provided to residents in Japan.

A CAES provider is required to manage its customers’ money separately from its own money, and to entrust its customers’ money to a trust company or any other similar entity. A CAES provider shall manage the crypto assets of customers (“Entrusted CA(s)”) separately from its own crypto assets. In addition, a CAES provider is required to manage 95% or more of the value of total Entrusted CAs with full-offline wallets or by other technical measures that have an equivalent level of safety as full-offline wallets.

Crypto asset derivatives

As stated in the section “**Approaches and developments**” above, the amended Financial Instruments and Exchange Act (the “FIEA”) which entered into force on May 1, 2020 includes specific regulations on crypto asset derivatives. As a consequence of the inclusion of “crypto assets” and standardised instruments of crypto assets created by financial instruments exchanges within the definition of financial instruments, and the inclusion of crypto asset prices, interest rates, etc. within the definition of financial indicators, respectively, crypto asset derivative transactions are now subject to the provisions of the FIEA, regardless of the type of derivative transactions involved. For instance, the provision of OTC crypto asset derivative transactions or acting as an intermediary or broker in relation thereto constitutes Type 1 Financial Instruments Business under the amended FIEA. Accordingly, a

company engaging in these transactions needs to undergo registration as a Type 1 Financial Instruments Business Operator (“Type 1 FIBO”). In addition to various rules of conduct applicable to those Type 1 FIBOs providing crypto asset derivative services under the FIEA, it is noteworthy that the amended FIEA introduced strict leverage ratio regulations. If a Type 1 FIBO engages in crypto asset derivative transactions, the amount of margins to be deposited by a customer must: (i) if the customer is an individual, not fall below 50% of the amount of crypto asset derivative transactions (i.e., the leverage ratio is limited to two times); or (ii) if the customer is a corporation, not fall below the amount of crypto asset derivative transactions, multiplied by 50% or the crypto asset risk assumption ratio based on the historical crypto asset volatilities as specified in the public notice issued by the FSA entitled “Establishing the Calculation Method for Crypto Asset Risk Assumption Ratio in Crypto Asset Margin Trading”.

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”). While Paragraph 1 Securities are subject to relatively stricter requirements in terms of disclosures and licensing/registration as they are highly liquid, Paragraph 2 Securities are subject to relatively looser requirements as they are less liquid. However, if securities are issued using an electronic data processing system such as blockchain, it is expected that such securities may have higher liquidity than securities issued using conventional methods, regardless of whether they are Paragraph 1 or Paragraph 2 Securities. For this reason, the amended FIEA introduces a new regulatory framework for securities which are transferable by using electronic data processing systems. Under the amended FIEA, securities which are transferable by electronic data processing systems are classified into the following three categories:

- i. Paragraph 1 Securities such as shares and bonds which are transferable by using 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, which are transferable by using electronic data processing systems (electronically recorded transferable rights (“ERTRs”)).
- iii. Contractual rights such as trust beneficiary interests and interests in collective investment schemes, conventionally categorised as Paragraph 2 Securities, which are transferable by using electronic data processing systems but have their negotiability restricted to a certain extent (Non-ERTR Tokenised Paragraph 2 Securities).

An issuer of Tokenised Paragraph 1 Securities or ERTRs is in principle required, prior to making a public offering or secondary distribution, to file a securities registration statement as is the case for traditional Paragraph 1 Securities, unless the offering or distribution falls under any category of private placements. Any person who engages in the business of the sale, purchase or handling of the offering of Tokenised Paragraph 1 Securities or ERTRs is required to undergo registration as a Type I FIBO. In light of the higher degree of freedom in designing Tokenised Paragraph 1 Securities or ERTRs and the higher liquidity of these securities, a Type 1 FIBO that handles these digital securities is required to control risks associated with digital networks such as blockchain used for digital securities.

Electronic payment intermediary services

On June 1, 2018, the amendment to the Banking Act came into force to regulate electronic payment intermediary service providers in order to facilitate open APIs. Electronic payment

intermediary 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 entrustment from customers, or entities using IT to provide customers with information about their financial accounts held by banks. Entities providing financial account aggregation services are also categorised as electronic payment intermediary service providers. They are required to register with the FSA in order to provide these services.

Below are the key regulations applicable to registered electronic payment intermediary service providers:

- i. An electronic payment intermediary service provider that intends to conduct services that constitute electronic payment intermediary services must, in principle, disclose certain matters in advance. Such matters include the trade name or address, authority, indemnity, and the contact details of the office dealing with complaints.
- ii. With regard to electronic payment intermediary services, electronic payment intermediary service providers must (a) provide information to prevent misunderstandings, (b) ensure proper handling of user information, (c) maintain safety management measures, and (d) take measures to manage outsourcing contractors.
- iii. Electronic payment intermediary service providers must conclude a contract regarding electronic payment intermediary services with a bank prior to performing acts that constitute electronic payment intermediary services.
- iv. The contract must specify (a) the allocation of indemnity liability in cases where users suffer damage, (b) measures for proper handling of user information, and (c) measures for safety management. Both the bank and the electronic payment intermediary service providers must publish (a) to (c) above without delay when concluding the contract.

Financial services intermediary business

In June 2020, the Act on Sales, etc. of Financial Instruments was amended in order to establish an industry suitable for financial services intermediaries that are seeking to provide a convenient one-stop service through which users can receive various financial services. This amendment entered into force in November 2021 and the name of the Act was changed to the Act on the Provision of Financial Services.

Under the previous regulatory framework in Japan, financial intermediary services were divided by “functions”, such as bank agents and electronic payment service providers under the Banking Act, financial instruments intermediary service providers under the FIEA, and insurance agents and insurance brokers under the Insurance Business Act. Therefore, a business operator handling products and services across multiple “functions” would be required to apply for multiple licences. In addition to that, if a business intended to act as the agent or the intermediary for multiple financial institutions (i.e., the principals) in handling the products and services provided by such financial institutions, it must bear the significant burden of responding to the instructions given by each relevant principal financial institution.

Under the new framework, by obtaining a new registration as a “financial services intermediary business operator” (“FSIBO”), a business operator will be permitted to act as an intermediary for cross-sectional financial services without being subject to the supervision of any principal financial institutions.

Since a FSIBO is not subject to the supervision of principal financial institutions, the scope of its business will be restricted in the manner as described below:

- i. it may not offer financial services as an “agent” of any financial service provider; and
- ii. it may not handle financial instruments which are expected to be specified by the relevant cabinet order as requiring highly specialised explanations to customers, such as derivative transactions or structured deposits.

In addition to the above, an FSIBO will be required to pay a security deposit to meet the needs of its own intermediary business and will be prohibited from holding customers' funds regardless of whether or not it is only holding such funds temporarily.

Stable coins

The FSA recently submitted to the Diet the bill for amending the PSA, with the aim of introducing new regulations on stable coins. If the bill passes the Diet, it is expected that the new regulations will enter into force by June 2023. Under the new regulations:

- i Stable coins that can be redeemable in fiat currencies (a.k.a. fiat-backed stable coins) will be regulated as electronic payment instruments ("EPIs"). Non-fiat-backed stable coins such as DAI will continue to be regarded as crypto assets.
- ii Those who are permitted to issue EPIs directly to Japanese residents are limited to banks, funds transfer services providers, trust banks or trust companies that are licensed in Japan.
- iii An entity that (i) sells or purchases EPIs, (ii) acts as an intermediary, a broker or an agent for the issuance or sales and purchases of EPIs, or (iii) provides custody services of EPIs, as a business, is required to obtain a license as an electronic payment instruments business provider ("EPIBP").
- iv An EPIBP is subject to AML/CFT regulations, including a travel rule. Namely, An EPIBP is required to provide the customer's identification information when transferring EPIs to any other EPIBPs upon the customer's instruction. Moreover, an EPIBP who continuously sends or receives EPIs to or from overseas virtual asset service providers ("VASPs") needs to check whether such VASPs are conducting appropriate due diligence on users for AML/CFT purposes.

Other services

Apart from the regulations applicable to crypto asset-related services, services related to digital securities, electronic payment intermediary services and financial services intermediary business, there is no regulatory framework specifically designed to regulate Fintech businesses in Japan. However, if the services provided by the Fintech companies are subject to existing financial regulations, they are also required to comply with these existing regulations, which include obtaining any applicable licence or registration. A firm (including an overseas firm) that wishes to undertake regulated activities in Japan is required to obtain the applicable authorisation from Japanese financial regulators, the FSA or one of the Local Financial Bureaus to which the FSA has delegated a part of its authority or the METI. Please note that if an entity conducts solicitation activities in Japan for using its services, even if this is carried out from abroad, such an act may be considered an undertaking of regulated activities in Japan.

Money transfer services are regulated under the Banking Act and other acts applicable to other depository institutions, which require firms that wish to enter into this business to obtain the relevant licence from the FSA; however, services involving money transfers of not more than JPY 1 million per transaction could be provided without the aforesaid licence if the firm obtains registration as a "funds transfer service provider" under the PSA.

In this regard, the PSA was amended in June 2020 and came into effect on May 1, 2021 in order to facilitate the increased use of cashless payments. The amended PSA classifies funds transfer services ("FTS") into the following three categories: 1. FTS involving remittances exceeding JPY 1 million per transaction ("Category 1 FTS"); 2. FTS that correspond to the FTS in the PSA prior to the amendment (the "Former PSA"), i.e., FTS involving remittances of amounts not exceeding JPY 1 million per transaction ("Category 2 FTS"); and 3. FTS involving remittances of amounts not exceeding JPY 50,000 per transaction ("Category 3 FTS").

Under the amended PSA, a Category 1 FTS provider must be authorised to operate by the FSA and comply with a stricter code of conduct than a Category 2 FTS provider. For instance, Category 1 FTS providers are not permitted to retain funds beyond the period necessary for processing administrative affairs relating to the transfer of funds. Namely, Category I FTS providers are prohibited from providing FTS in the form of wallet services, and funds deposited by users must be transferred immediately while funds received by users must be paid out immediately.

The requirements applicable to a Category 2 FTS provider remain mostly the same as those applicable to an FTS provider under the Former PSA. A Category 3 FTS provider may operate if registered with the FSA and is subject to a more relaxed code of conduct than a Category 2 FTS provider.

Regarding e-money, an issuer of prepaid payment instruments (including e-money which cannot be redeemed) must comply with the applicable rules under the PSA. If prepaid payment instruments can be used only for payments to the issuer for its goods or services, the PSA does not require the issuer to obtain registration, provided that it complies with certain reporting obligations. On the other hand, if prepaid payment instruments can be used not only for payments to the issuer for its goods or services but also for payments to other entities designated by the issuer, the issuer is required to obtain registration as an “issuer of prepaid payment instruments” under the PSA.

Please note that an online payment instrument can be considered either a “funds transfer” system, a “prepaid payment instrument”, a “crypto asset” or something else. As the scope of each type of payment instrument is not easy to distinguish, it is recommended to consult specialists if an entity wishes to undertake business related to online payments in Japan.

Influence of supra-national regulatory bodies

The Financial Action Task Force has been influential in the development of Fintech-related regulations in Japan. For instance, the Guidance for a Risk-based Approach to Crypto Assets by the Financial Action Task Force (“FATF Guidance”) in June 2015 was the trigger for the introduction of regulations on crypto asset exchanges in Japan. The introduction of regulations on crypto asset custody services, which are described in the section “**Key regulations and regulatory approaches**” above, was pursuant to the recommendation of the FATF in October 2018.

Additionally, the introduction of a risk-based approach to the AML guidelines of the FSA, published in February 2018, was also a reaction to the FATF recommendations.

Financial regulators and policymakers in Japan are generally receptive to Fintech innovation and technology-driven new entrants in the regulated financial services markets, save that the FSA is taking a more conservative approach than before to crypto asset-based businesses following the hacking incident in January 2018, which involved one of the largest crypto asset exchanges in Japan losing approximately USD 530 million’s worth of cryptocurrencies.

Sandbox and other initiatives

In June 2018, the Headquarters for Japan’s Economic Revitalization, under the Cabinet Secretariat, opened a cross-governmental one-stop desk for the regulatory sandbox (the “Regulatory Sandbox”) within the Japan Economic Revitalization Bureau. The Regulatory Sandbox can be used by Japanese and overseas companies, and it enables companies that apply and receive approval for projects not yet covered by present laws and regulations to carry out a demonstration under certain conditions without the need for amendment of existing laws or regulations. There is no limitation on the area of business regarding which companies can apply for the Regulatory Sandbox; however, AI, IoT, big data and blockchain projects are explicitly mentioned as the most prospective and suitable areas.

Separately, in December 2015, the FSA established the “Fintech Support Desk”. It is a one-stop contact point for inquiries and the exchange of information on Fintech. It accepts a wide-range of inquiries on various matters from those who currently operate Fintech businesses and others who intend to start Fintech startups.

In addition, the FSA established a “Fintech PoC Hub” in September 2017. The Hub gives support to Fintech companies and financial institutions when they conduct an unprecedented PoC. Please note that certain regulations are not suspended during the PoC, but the Hub aims to eliminate companies’ concerns of violating applicable regulations during the PoC by providing legal and other advice.

In March 2017, the FSA announced the launch of the “Financial Market Entry Consultation Desk” to give advice on Japan’s financial regulations to foreign financial business operators that plan to establish a Fintech business based in Japan. In January 2021, the FSA reorganised the “Financial Market Entry Consultation Desk” into the “Financial Market Entry Office”, in order to enhance its English support service.

Restrictions

There are, at present, no prohibitions or restrictions that are specific to Fintech businesses in Japan. Certain types of Fintech business are regulated (see “**Key regulations and regulatory approaches**” above); however, these businesses can be carried out in compliance with applicable regulations.

As we noted above, a remarkable recent topic with respect to restrictions is the hacking of a crypto asset exchange, which triggered revisions of the regulations governing crypto assets and crypto asset exchanges.

Cross-border business

It is worth noting that some Fintech players in Japan are collaborating with global payment businesses. For instance, Line Pay and PAYPAY, both emerging QR code payment service providers in Japan, are collaborating with Tencent and Alibaba, respectively, enabling merchants in Japan to receive payments by WeChat Pay and Alipay. Additionally, there are some international FTS providers licensed in Japan that provide overseas FTS using their own fund remittance infrastructure at a reasonable cost compared to traditional banks.

In March 2017, the FSA and the UK’s Financial Conduct Authority jointly announced that they exchanged letters on a co-operation framework to support innovative Fintech companies in Japan and the UK to enter each other’s market by providing a regulatory referral system. The FSA has established similar frameworks with the Monetary Authority of Singapore (“MAS”), the Australian Securities & Investments Commission (“ASIC”), the Abu Dhabi Global Market Financial Services Regulatory Authority (“ADGM”), the Swiss Financial Market Supervisory Authority (“FINMA”), the *Autorité des marchés financiers* (“AMF”) and the Dubai Financial Services Agency (“DFSA”).

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 throughout the financial sector, the TMG gives particular importance to asset management and Fintech businesses. In 2020, the TMG further released a paper titled “‘Global Financial City: Tokyo’ Vision 2.0”. It illustrates three new focuses of the TMG, which are “promotion of green finance”, “financial digitalization”, and “accumulation of diverse finance-related players”.

As a part of such measures, 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, the Center provides both business exchange support and specialised consulting services. Furthermore, the “Tokyo One-Stop Business Establishment Center” facilitates the incorporation of its ancillary procedures, such as taxes, social security and immigration for foreign entrepreneurs considering establishing businesses in Tokyo.



Ken Kawai

Tel: +81 3 6775 1205 / Email: ken.kawai@amt-law.com

Ken Kawai has extensive experience advising financial institutions, Fintech startups, 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.

Ken also specialises in derivatives and has counselled global banks, broker-dealers and investors on regulatory matters and best practices with respect to derivatives and related products. Ken's deep and practical knowledge in this area is rooted in his 17-year career at MUFG Bank, Ltd. (formerly known as the Bank of Tokyo-Mitsubishi and, prior to that, the Bank of Tokyo Ltd.), where he was involved in derivatives trading and marketing. Ken received a Band 1 evaluation in the Legal Department in *Chambers FinTech* 2022.



Shunsuke Aoki

Tel: +81 3 6775 1173 / Email: shunsuke.aoki@amt-law.com

Shunsuke Aoki is a partner at Anderson Mōri & Tomotsune. Since joining the firm in 2008, Shunsuke has been primarily engaged in financial regulatory matters with a recent particular focus on Fintech matters, corporate finance transactions, including equity and debt offerings in both domestic and international capital markets, and project finance transactions. Shunsuke has external experience at one of Japan's leading securities houses (2014–2016) where he was a member of the Capital Market Department in the Investment Banking Division, and at Sullivan & Cromwell LLP, New York (2013–2014) as a Visiting Lawyer. Shunsuke is admitted to practise in Japan and New York and earned a J.D. from University of Tokyo School of Law and an LL.M. from New York University School of Law.



Keisuke Hatano

Tel: +81 3 6775 1250 / Email: keisuke.hatano@amt-law.com

Keisuke Hatano is a partner at Anderson Mōri & Tomotsune and specialises in payment and settlement related regulations in Japan. He has also been involved in a number of significant finance transactions and engaged in many international & domestic litigations. In addition to his professional experience at Anderson Mōri & Tomotsune, he worked for the Financial Services Agency where he was mainly engaged in the several amendments to the Banking Act which aim to create a pro-Fintech environment.

Anderson Mōri & Tomotsune

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

Tel: +81 3 6775 1000 / URL: www.amt-law.com

www.globallegalinsights.com

Other titles in the **Global Legal Insights** series include:

AI, Machine Learning & Big Data

Banking Regulation

Blockchain & Cryptocurrency

Bribery & Corruption

Cartels

Corporate Tax

Employment & Labour Law

Energy

Fund Finance

Initial Public Offerings

International Arbitration

Litigation & Dispute Resolution

Merger Control

Mergers & Acquisitions

Pricing & Reimbursement