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Overview of Regulations on Settlement Cards in Japan

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The Japanese regulations on payment cards are very complicated.

In this newsletter, I will make a brief overview of the regulations on payment cards in Japan and will also explain about (i) the amendment bill in Japan regarding credit card regulations that has been passed on Dec 2, 2016 and (ii) the amendment bill in Japan regarding virtual currency regulations which is expected to come into effect during April 2017.

1 Basic Framework in Japan

To understand the Japanese regulations on payment cards, one must first understand the concept of **Kawase Torihiki**.

Kawase Torihiki is basically a wire transfer transaction or its equivalent money transfer service. It is similar to the concept of money transfer businesses in the US or payment institution under the EU Payment Services Directive¹, but it does not include credit card transactions and it does not include most of the e-money services provided in Japan.

If a transaction falls under Kawase Torihiki, the business entity conducting Kawase Torihiki would require a banking license or Money Services Business registration (or more accurately Fund Transfer Service Provider registration), so the distinction is very important.

¹ Please note that Payment Initiation Service Providers and Payment Account Information Providers are not subject to registration obligations under current Japanese law as compared to PSD2 of the EU, but a reform to require so is under discussion.

Kawase Torihiki	Not Kawase Torihiki
Bank Cash Card	Post Pay
Bank Debit Card	Credit Card
Money Services Business Card	Charge Card
	Pre Pay
	Prepaid Payment Instrument Card (*)
	Virtual Currency (*)

* There are cases that transactions by issuers and/or traders of prepaid cards or virtual currencies may fall under Kawase Torihiki, so most of the Japanese entities take various measures to avoid falling under Kawase Torihiki. The concept of Kawase Torihiki is very complicated, so if would like to know more in detail, please contact us.

2 Credit Cards and Charge Card

(1) What are Credit Cards and Charge Cards ?

Credit Cards and Charge Cards are both post pay cards.

Both are payment cards issued to users (or cardholders) to enable the cardholder to pay merchants for goods and services, based on the cardholder's promise to the card issuer to pay them for the amounts so paid plus other agreed charges.

Charge Card is different from Credit Cards in that each month's spending is expected to be paid monthly². Thus, Charge Card functions are called "Monthly Clear" functions in Japan. The monthly spending is expected to be paid every monthly and this makes the credit balance to be cleared every month.

(2) Are credit cards and charge cards popular in Japan ?

Yes. Very popular. Most of the online B2C transactions are settled through credit cards / charge cards. They are a lot more popular in Japan than debit cards and pre-paid cards are.

You may wonder why credit cards are more popular than debit cards and prepaid cards. There are probably two main factors. The first factor is that the reward programs or loyalty programs for credit cards are generally more advantageous to the users than

² In the Installment Sales Act which regulates credit cards and charge cards, the spending of Charge Cards need to be payable within two months from the purchase of the goods or services using such card. For example, credit card purchase made on Jan 1 should be payable on or before March 1.

those for debit card and prepaid cards. The second factor is that the number of merchants accepting credit cards are said to be greater than the number for debit card and prepaid cards.

By the way, Japanese credit card companies do not issue charge cards alone. Charge Card and Credit Card are issued together in one card with both functions.

(3) Who issues Credit Cards and Charge Cards in Japan ?

Banks and non-bank financial institutions issue credit cards and charge cards in Japan.

Due to historical reasons and for other reasons, majority of the credit cards are issued by non-bank financial institutions and not by banks. However, most of the issuers belong to a cooperative group having a bank in it.

(4) Who acquires merchants for credit card and charge card ?

The answer is the same as (3).

Some acquirers contract with payment services providers ("PSP's" or "*Kessai-Daikou*") who would acquire sub-merchants. Using PSPs enables financial institutions, including those abroad, to enhance their acquiring abilities.

(5) Registration Requirements ?

(a) Issuing

In order to issue credit cards, registration as an issuer ("Issuer Registration") with the Japanese government under Japan's Installment Sales Act ("JISA") is basically required³.

Even if, a financial institution has a bank license, Issuer Registration is required nonetheless.

(b) Acquiring

A bill to amend the JISA has been passed on December 2, 2016. It will come into effect on or before June 9, 2018.

The amended JISA basically requires acquirers to register as an acquirer under the JISA ("**Acquirer Registration**").

³ There are some exemptions under the JISA (Article 35-3-60).

Even if a financial institution has a bank license, Acquirer Registration is required nonetheless.

(c) Sub-Acquiring

Acquirer - [Merchant Agreement] - Sub Acquirer -[Sub Merchant Agreement] - Merchant

The amended JISA basically requires sub-acquirers to get an Acquirer Registration.

For example, if an internet shopping mall platform operator, or a service like PayPal enables C2C transactions to be settled through credit cards, such platform operator, etc., may need to discuss acquiring an Acquirer Registration.

Considering this issue, METI has shown an interpretation that if the Sub Acquirer is ultimately deciding whether to enter into credit card settlement with the merchant and whether to terminate such contract, then such Sub Acquirer shall obtain an Acquirer Registration. And METI says that not only the wording of the contracts, but also the substance and actual operation shall be taken into consideration.

(d) Merchants

No registration is required for being a credit card merchant.

However, merchants are subject to certain disclosure obligations on each credit card transactions (Item 4, Article 35-2-3 of JISA).

In addition, under the Amended JISA, the merchants will be required to adopt certain measures to ensure security of the credit card transaction data and to prevent credit card frauds which security measures are to be listed in the Cabinet Ordinance of the JISA which is not implemented yet.

METI is explaining to credit card companies that if the merchants comply with the "Implementation Plan For Enhancement of Security Regarding Credit Card Transactions" (hereinafter, "**Implementation Plan**") which is publicized by the Credit Transaction Security Committee of Japan, then that will suffice.

The 2016 Implementation Plan requires merchants to implement (i) PCI DSS measures by 2018 for EC merchants and by 2020 for other merchants, (ii) IC card acceptance measures by 2020 and (iii) such other measures to avoid security breakage

and ID theft; provided however that merchants who do not process or store credit card numbers, for example by using registered Sub Acquirers and having them process credit card numbers, will not be obligated to comply with PCI DSS.

The Implementation Plan will be updated periodically taking into consideration the figures of credit card number leakage incidents and such.

(5) Will registration be Necessary for the following cases ?

(a) A foreign Bank issues credit cards in Japan

Issuer Registration under the JISA is basically necessary.

(b) A bank in Singapore issues a credit card to a Singapore resident, but such resident immigrates to Japan and the Singapore bank sends a credit card to such user for the renewed term

Issuer Registration under the JISA is basically necessary.

(c) A Foreign Bank conducts acquiring activities in Japan.

Under the amended JISA, Acquirer Registration will be required.

(d) A Foreign Bank, by itself or through PSPs, acquires a merchant outlet located in Japan

There are uncertainties left on the extent of cases that would be judged as "acquiring activity in Japan", but it is generally considered that this case (b) will likely be judged as an acquiring activity in Japan.

On the other hand, in cases where, for example, a US bank acquires a merchant outlet located in US of a Japanese cooperation, Acquirer Registration under the JISA will not be required.

(6) Is there any other license or other registration requirements that a financial institution should take into consideration ?

Most of the credit cards issued in Japan have (i) loan function, in addition to (ii) the shopping function.

	Loan Function	Credit Card / Charge Card Function
Bank	Banking Act	Installment Sales Act (JISA)
Non-Bank	Money Lending Business Act (MLBA)	Installment Sales Act (JISA)

The loan function is regulated by Japan's Banking Act or the Money Lending Business Act ("MLBA").

Thus, if a non-bank financial institution wants to provide loan function, it would need a MLBA registration.

(7) Please explain the overall regulation under the JISA

(a) Issuer

The main obligations of issuers are as follows:

- (i) Required to ensure compliance through internal control (JISA Article 30-2, Item 1, Paragraph 10, Article 33-5);
- (ii) Disclosure requirements in relation with the cardholder (JISA Article 30-2-3);
- (iii) Obligation to make investigations on the financial conditions of card applicant who is a consumer⁴ (JISA Article 30-2);
- (iv) Obligation to use card bureaus for the investigations provided for in (iii) above (JISA Article 30-2, Item 3).;
- (v) Statutory limit on the maximum amount of credit limit that an issuer can set in relation with a consumer card holders (JISA Article 30-2 and Article 30-2-2);
- (vi) Obligation to ensure security of the credit card numbers (Article 35-16);
- (vii) Advertisement regulation (Article 30, Item 3); and
- (viii) Obligation to not collect the remaining outstanding credit balance from a consumer, in cases where such consumer refuses to pay such outstanding amount insisting a legitimate defense that such consumer has against the Merchant (Article 30-4).

Please note that except for (vi) above, the above obligations (i) through (viii) will not be applied in relation to Monthly Clear Transactions.

Also, under the Amended JISA, Issuers will basically need to comply with the Implementation Plan. That means compliance with PCI DSS, issuance of IC Cards and such is expected to be legally mandated. For details, we would have to wait for the cabinet order and cabinet ordinance for JISA to be implemented.

(b) Acquirer

The main obligations of acquirers under the amended JISA will be as follows:

- (i) Required to ensure compliance through internal control;

⁴ Here, "consumer" means that (x) individual acting as a business owner and (b) legal entities are not included.

- (ii) Required to make investigations on the credit card security measures and credit card fraud protection measures of merchants;
- (iii) Required to refuse accepting merchants who have insufficient security measures or credit card fraud protection measures;
- (iv) Obligation to ensure security of the credit card numbers; and
- (v) Required to file to "Japan Credit Association" the name and such of merchants regarding which the acquirer has recognized as having conducted improper solicitation and such in relation with the cardholder.

(8) What other laws and regulations should a financial institution need to worry about ?

Advertisements and Award Programs	Act against Unjustifiable Premiums and Misleading Representations Act on Specified Commercial Transaction Act on Regulation of Transmission of Specified Electronic Mail
Anti-Money Laundering (Know Your Customer Regulation etc.)	Act on Prevention of Transfer of Criminal Proceeds
Antitrust	Act on Prohibition of Private Monopolization and Maintenance of Fair Trade
Consumer Protection (Ensuring Fairness of the terms and such)	Consumer Contract Act
Interest Rate	Interest Rate Restriction Act Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates
Loan (*)	Banking Act MLBA
Personally Identifiable Information	Act on the Protection of Personal Information

Also, there are rules and guidelines by the government (METI) and by Japan Credit Association which is a self-regulatory organization of the industry.

* Most of the credit cards have cashing functions attached to it as well. Thus, users can use the credit cards to borrow money from the issuer financial institution at ATMs of the issuer or its alliance partner financial institutions. This lending

transaction will be regulated by the Banking Act, if the issuer is a bank, and by the MLBA, if the issuer is a non-bank financial institution.

3 Bank Cash Card and Bank Debit Card

(1) Money Transfer

In Japan, only licensed banks and registered Fund Transfer Service Provider ("FTSP") can engage in the business of "*Kawase Torihiki*", which is equivalent to money transfer business (Banking Act Article 4, Item 1 and Payment Services Act Article 37)⁵. So, it can be said that FTSP is equivalent to **money services businesses** in the US.

(2) What are Bank Cash Cards and Debit Cards ?

Bank cash cards are cards that are issued by banks to accept deposits, and it can be used by cardholders to (i) withdraw money deposited from bank ATMs and (ii) to send money through wire transfer to other bank accounts. On the other hand, bank cash cards may not be used to pay for purchasing goods at merchant outlets. It may not have a debit card function.

Bank debit cards are cards that can be used to purchase goods and services at a merchant outlet.

In Japan, there are mainly two types of debit cards, one is "J-Debit", which is operated by Japan Debit Card Promotion Association and the other is the so-called "Brand Debit Card", which is operated by International Card Networks like Visa⁶.

	Bank Cash Card	Bank Debit Card
Withdraw deposited money	Yes	Yes
Send money through Wire Transfer	Yes	Yes
Purchase Goods and Services at Merchant Outlet	No (meaning not necessarily)	Yes

(3) Who can issue Bank Cash Cards ?

Only banks with banking license under the Japan's Banking Act can issue Bank Cash Cards. This is because only banks can accept deposits.

⁵ There are few exceptions by special laws. Also, credit card transactions, charge card transactions and certain other transactions are not regarded as "*Kawase-Torihiki*".

⁶ In Japan, we call international card networks like Visa, MasterCard, and JCB as "Brand" company, so it is generally called "Brand Debit Card".

A branch office in Japan of a foreign bank can also apply for a license under the Banking Act.

(4) Who can issue Bank Debit Card ?

Only Banks can.

(5) Who can acquirer merchants for Bank Debit Card ?

Only banks can. Banks can delegate the acquiring operation to a third party.

(6) Which regulations should one take into consideration pertaining to Bank Cash Card and Bank Debit Card ?

Basically, the Banking Act. The following regulations should also be taken into consideration.

Advertisements and Award Programs	Act against Unjustifiable Premiums and Misleading Representations Act on Regulation of Transmission of Specified Electronic Mail
Anti-Money Laundering (Know Your Customer Regulation etc.)	Act on Prevention of Transfer of Criminal Proceeds
Antitrust	Act on Prohibition of Private Monopolization and Maintenance of Fair Trade
Cross Border Money Transfer or Money Transfer between resident users and non-resident users	Foreign Exchange and Foreign Trade Control Act
Cross Border Payments	Act on Submission of Statement of Overseas Money Transfers for Purpose of Securing Proper Domestic Taxation (*) * Requires collection of Social Security and Tax Number of the users and such.
Interest Rate	Interest Rate Restriction Act
Loan (e.g. through overdraft)	Banking Act
Personally Identifiable Information	Act on the Protection of Personal Information
Social Security and Tax Number (the so-called "My Number")	Act on the Use of Numbers to Identify a Specific Individual in the Administrative Procedure

Also, there are rules and guidelines by the government (FSA).

4 Money Service Business Card

(1) What are Money Service Business Card ?

Money Services Business Cards are cards that are issued by FTSPs to their users.

Most of the FTSPs have their users create an account and accept funds from the users in advance.

Some Japanese non-bank financial institutions issue Visa Debit Card as FTSP.

(2) Which Act Regulates Money Services Business Card ?

Japan's Payment Services Act ("JPSA") regulates Money Services Business.

(3) What are the main obligations of FTSPs under JPSA ?

The main obligations under JPSA are as follows:

- (i) Required to obtain registration as FTSP (JPSA Article 37);
- (ii) The maximum transaction amount of a money transfer transaction through FTSP is limited to 1 million yen per transaction (JPSA Article 2, Item 2);
- (iii) Required to make a security deposit to the government or to obtain an assurance by banks or to take other equivalent measures (JPSA Article 47);
- (iv) Required to take necessary measures to ensure proper and secure handling of information regarding the Funds Transfer Service (JPSA Article 49);
- (v) Required to implement measures to ensure proper and secure operation of the Funds Transfer Service by outsourcing companies in case where the FTSP uses such outsourcing companies (JPSA Article 50);
- (vi) Required to provide or disclose certain information items provided for under the JPSA (JPSA Article 51 and Cabinet Ordinance Article 29);
- (vii) Required to provide receipts to each user upon acceptance of funds from each such user (JPSA Article 51 and Cabinet Ordinance Article 30); and
- (viii) Required to maintain proper records pertaining to the Fund Transfer Business (JPSA Article 52).

(4) What other laws and regulations should a FTSP need to worry about ?

Advertisements and award programs	Act against Unjustifiable Premiums and Misleading Representations Act on Specified Commercial Transaction Act on Regulation of Transmission of Specified Electronic Mail
Personally Identifiable	Act on the Protection of Personal Information

Information	
Loan	Banking Act MLBA
Interest Rate	Interest Rate Restriction Act Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates
Antitrust	Act on Prohibition of Private Monopolization and Maintenance of Fair Trade
Anti-Money Laundering (Know Your Customer Regulation etc.)	Act on Prevention of Transfer of Criminal Proceeds
Cross Border Money Transfer or Money Transfer between resident users and non-resident users	Foreign Exchange and Foreign Trade Control Act
Cross Border Payments	Act on Submission of Statement of Overseas Money Transfers for Purpose of Securing Proper Domestic Taxation
Social Security and Tax Number (the so-called "My Number")	Act on the Use of Numbers to Identify a Specific Individual in the Administrative Procedure
Consumer Protection (Ensuring Fairness of the terms and such)	Consumer Contract Act

Also, there are rules and guidelines by the government (Financial Services Agency) and by the Japan Payment Service Association which is a self-regulatory organization of the industry.

(5) What is the main advantage of FTSP Cards compared to E-money Cards ?

It can be used to withdraw funds overseas. E-Money Cards cannot be used in such way.

5 Prepaid Payment Instrument Card (Brand Prepaid Card, E-money and Gift Card)

(1) What is Prepaid Payment Instrument Card?

Prepaid Payment Instrument is a prepaid value issued under the Japanese Payment Services Act.

The prepaid payment instrument card may only be used to purchase goods and services and cannot be redeemed except for statutory exceptions.

One type of an Prepaid Payment Instrument Card is where global digital content platform service providers (e.g. Apple) or Japanese online game platform service providers (e.g. GREE, Line) issuing and selling e-money cards or gift cards through convenience stores.

Users would purchase it because (i) it is easy to buy, (ii) no Customer Identification processes are required, (iii) no risk of ID thefts compared to credit card transactions, (iv) users may be able to use the e-money anonymously and (v) users may give the e-money to his friend or family as gifts.

The other type of Prepaid Payment Instrument Card is Brand Prepaid Cards. Some Japanese financial institutions issue Brand Prepaid Cards and operate such business with E-Money registration.

As long as the Brand Prepaid Cards cannot be used at ATMs to withdraw money, in Japan and overseas, payment transactions through such cards will not be basically regarded as *Kawase Torihiki* and would not require FTSP registration.

(2) Who can issue Prepaid Payment Instrument Cards ?

Entities holding a registration for Prepaid Payment Instrument for Third Parties can⁷.

Banks can also acquire such registration. For example, Bank of Tokyo Mitsubishi UFJ, Sumitomo Mitsui Banking Corporation, AEON Bank, and Rakuten Bank have such registration.

(3) What are the advantages of Prepaid Payment Instrument Cards compared to FTSP Cards ?

The regulations are much lighter compared to FTSP Cards.

For example, for non-bank financial institutions, anti-money laundering related regulations are basically not applied.

⁷ If the Prepaid Payment Instrument can only be used to purchase goods and services provided by the Issuer, such Prepaid Payment Instruments are called Prepaid Instruments for Own Business and if the Prepaid Payment Instrument can be used to purchase goods and services provided by entities other than the Issuer, then they are called Prepaid Instruments for Third Parties.

The two types are regulated differently, but, since most of the prepaid cards commonly used are the latter, I would only comment on the latter in this newsletter.

(4) Why are they regulated lighter than FTSP Cards ?

Prepaid Payment Instrument Cards cannot be basically redeemed.

So, for example, in case an user purchase a Prepaid Payment Instrument Card at a convenience store and send it to his/her friend, such friend will not be able to redeem the e-money to get cash. Thus, the risk for the e-money to be used for money laundering purpose is deemed to be lower than FTSP Card and is regulated lighter than FTSP Cards.

(5) What are the main regulations of Prepaid Payment Instrument Issuers ?

The main obligations are as follows:

- (i) Required to obtain registration (JPSA Article 7);
- (ii) Required to display or provide certain information pertaining to the Prepaid Payment Instrument (JPSA Article 13);
- (iii) Required to make a security deposit to the government or to obtain an assurance by banks or to take other equivalent measures (JPSA Article 14) except for cases where the issuer is a bank;
- (iv) Required to take necessary measures to ensure proper and secure handling of information regarding the Funds Transfer Service (JPSA Article 21); and
- (v) Required to maintain proper records pertaining to the Fund Transfer Business (JPSA Article 22).

(6) What other regulations should an Prepaid Payment Instrument Issuer be careful of ?

The Prepaid Payment Instrument Issuer will have to be careful of the following regulations.

Advertisements and Award Programs	Act against Unjustifiable Premiums and Misleading Representations Act on Specified Commercial Transaction Act on Regulation of Transmission of Specified Electronic Mail
Antitrust	Act on Prohibition of Private Monopolization and Maintenance of Fair Trade
Consumer Protection (Ensuring Fairness of the terms and such)	Consumer Contract Act
Kawase Torihiki	Banking Act and JPSA * * One must be careful so that the payment

	transactions will not fall under Kawase Torihiki or else banking license or FTSP registration will be required.
Personally Identifiable Information	Act on the Protection of Personal Information

Also, there are rules and guidelines by the government (FSA) and by the Japan Payment Service Association which is a self-regulatory organization of the industry.

6 Virtual Currencies

(1) How are Virtual Currencies regulated ?

Virtual Currencies are basically not regulated under current Japanese law.

However, an amendment bill to the JPSA has already been passed in the Japanese Congress on May 25, 2016 which will require Virtual Currencies Traders to be registered under the JPSA.

On December 28, 2016, the drafts for cabinet order and cabinet ordinance of the JPSA were put on public comment. The amended JPSA is expected to brought into effect during April, 2017.

(2) What are virtual currencies ?

Virtual Currencies are defined as either of the following:

- (i) a proprietary value electronically recorded on an electronic device or otherwise which can be transferred to a third party using an electronical system and which can be used as a mean to purchase goods or services or to borrow goods from many and unspecified persons, or
- (ii) a proprietary value electronically recorded (JPSA Article 2, Item 5).

(3) Who will be required to register ?

Any person engaging in the Virtual Currency Business (or "**Virtual Currency Traders**") will need to be registered (JPSA Article 63-2).

Here, the Virtual Currency Business means engaging in either of the following items:

- (i) sales and purchase of Virtual Currency, or the exchange of a Virtual Currency with another type of Virtual Currency;
- (ii) intermediary, brokerage, or agent service of (i); or
- (iii) administering money or Virtual Currency for its users of the service listed in (i) or (ii) that it provides to such users.

(4) What are the main obligations of Virtual Currency Traders ?

The main obligations of Virtual Currency Traders are as follows:

- (i) required to obtain registration as Virtual Currency Traders under JPSA;
- (ii) Required to separately administer the Virtual Currency that it holds on its own account with those that it holds for its users (JPSA Article 63-11, Item 1);
- (iii) Required to periodically undergo an audit by a certified auditor or accounting firm (JPSA Article 63-11, Item 2);
- (iv) Required to take necessary measures to ensure proper and secure handling of information regarding the Funds Transfer Service (JPSA Article 63-8);
- (v) Required to implement measures to ensure proper and secure operation of the Virtual Currency Business by outsourcing companies in case where the FTSP uses such outsourcing companies (JPSA Article 63-9);
- (vi) Required to provide or disclose certain information items provided for under the JPSA (JPSA Article 63-10);
- (vii) Required to display that the Virtual Currency is not a currency of Japan nor of other country (JPSA Enforcement Ordinance Article 17);
- (viii) Required to establish an internal control system to implement necessary measures to protect the users and to ensure appropriate operation of the Virtual Currency Business (JPSA Enforcement Ordinance Article 18 and 19); and
- (vii) Required to maintain proper records pertaining to the Fund Transfer Business (JPSA Article 63-13).

(5) What other laws and regulations should Virtual Currency Trader be careful of ?

Virtual Currency Trader should take into consideration the Kawase Torihiki regulation or else it would require a banking license or FTSP registration.

Also, Virtual Currency Traders are subject to anti-money laundering regulations, so this needs to be dealt with.

Advertisements and award programs	Act against Unjustifiable Premiums and Misleading Representations Act on Specified Commercial Transaction Act on Regulation of Transmission of Specified Electronic Mail
Personally Identifiable Information	Act on the Protection of Personal Information
Antitrust	Act on Prohibition of Private Monopolization and Maintenance of Fair Trade
Anti-Money Laundering	Act on Prevention of Transfer of Criminal Proceeds

(Know Your Customer Regulation etc.)	
Kawase Torihiki	<p>Banking Act or JPSA</p> <p>* One must be careful so that the payment transactions will not fall under Kawase Torihiki or else banking license or FTSP registration under JPSA will be required.</p>
Consumer Protection (Ensuring Fairness of the terms and such)	Consumer Contract Act

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