MORI HAMADA

Financial Regulation Newsletter

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FinTech Newsletter
Report of Working Group on Payment Services Systems, etc. (Related to Funds Transfer and Payment Services)

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Ⅰ. Introduction

On 22 January 2025, the Financial Services Agency (the "**FSA**") published the "Report of the Working Group on Payment Services Systems, etc." (the "**Report**"). The Report summarizes the discussions of the Working Group on Payment Services Systems, etc. (the "**Working Group**"), which was established on 26 August 2024 to consider regulations that will contribute to the sound development of business at a time of expansion of users and usage patterns of funds transfers, settlements, and credit services, as well as the emergence of new financial services. Based on the proposals in the Report, it is expected that amendments will be made to the Payment Services Act (the "**PSA**") in 2025 and related subordinate regulations and guidelines will be established or revised, so the Report is of great significance as it will also affect the practice of payments and settlement-related services in the future.

The themes of the Working Group are divided into (1) funds transfers and payment services, (2) crypto assets and stablecoins, and (3) other issues, such as advance payment services and participation in syndicated loans by foreign financial institutions. In this newsletter, we will introduce the proposals in the Report on (1) funds transfers and payment services and (3) advance payment services.

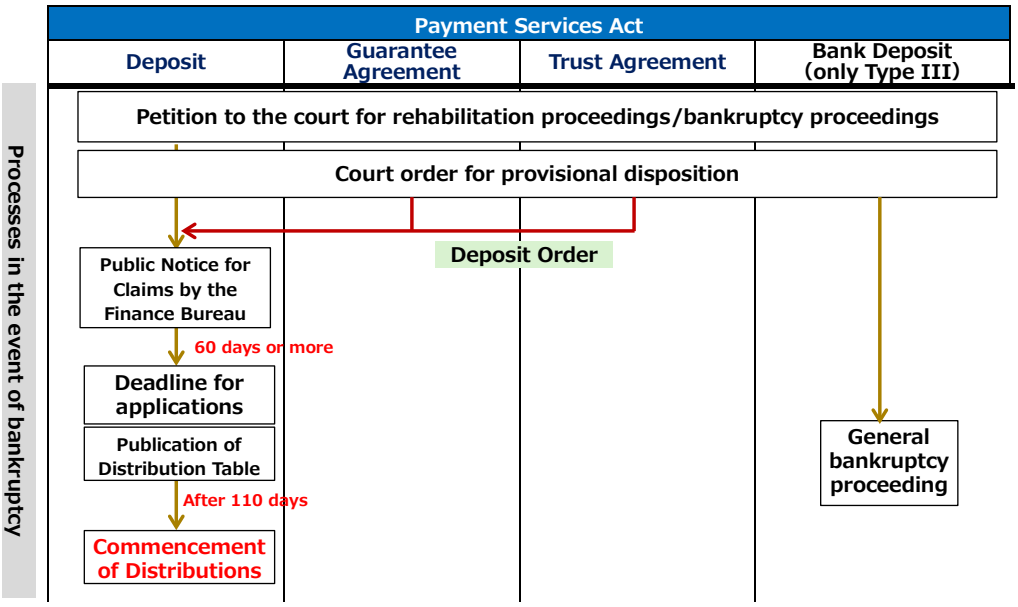
Ⅱ. Diversification of Methods for Returning User Funds in the event of Bankruptcy of a Funds Transfer Service Provider

1. Overview

Under the PSA, there are three types of Funds Transfer Service Providers.[1] Type I and Type II Funds Transfer Service Providers are required to safeguard the full amount of funds received from users by (i) depositing them with a public depository ("deposit"), (ii) using a bank guarantee ("guarantee agreement") or (iii) entering into a trust agreement with trust companies or trust banks ("trust agreement"). Type III Funds Transfer Service Providers may manage received funds as separate bank deposits ("bank deposit") in lieu of a deposit, guarantee agreement, or trust agreement.

In the event of the bankruptcy of a Type I or Type II Funds Transfer Service Provider, even if the provider entered into a guarantee agreement or trust agreement, the government will carry out refund procedures for users through a deposit procedure. It would take approximately 170 days at minimum to return funds to the user.

<Methods for Returning User Funds in the event of Bankruptcy of a Funds Transfer Service Provider>



(Extract from FSA's explanatory materials regarding the Working Group on Payment Services Systems, etc.

[1] Type I is subject to approval, and Types II and III are subject to registration, enabling the provision of fund transfer services according to the amount of funds transfer. Type I funds transfer service allows authorized providers to transfer funds in excess of JPY1million. Type II fund transfer service allows providers to transfer of JPY1million or less through a single remittance instruction. Type III fund transfer service allows providers to handle transmittance and customer accounts with an individual maximum of JPY50,000, while segregated accounts would be allowed, but provides less safeguarding of customer assets than other types. The details of these three types of Funds Transfer Service Providers, please see our newsletter "New Regulations on Payment and Settlement and Cross-Sectional Financial Services Intermediaries (The Amendment of the Payment Services Act and the Act on Sales, etc. of Financial Instruments)" (July 2020).

dated October 2024)

The Report points out that, 'while funds transfer services have been used widely in daily life, becoming an infrastructure for remittance and settlement, there is a growing need to swiftly and reliably return funds to users in the event that a Funds Transfer Service Provider becomes bankrupt'. In addition, regarding the payment of wages into the accounts of Funds Transfer Service Providers (so-called "**Digital Salary Payments**"), Funds Transfer Service Providers are required to make prompt repayments in the event of bankruptcy by entering into agreements with guarantee institutions without going through the refund procedures for deposits,[2] so the protection needed for an amount equivalent to the user funds is doubled, creating an excessive burden for Funds Transfer Service Providers.

In order to provide a method that allows for the prompt return of funds while ensuring the security and safety of the funds, the Report proposes to amend the PSA to allow for the direct repayment of funds to users in the event of the bankruptcy of a Funds Transfer Service Provider, without a deposit procedure.

2. Proposal

Specifically, the Report proposes two frameworks for direct repayment; namely (i) direct repayment by guarantee institutions and (ii) direct repayment by trustees. The summaries of the proposed frameworks are as follows:

Proposed frameworks for direct repayment		Description of framework	Remarks
Direct Repayment by Guarantee Institutions	Assumption of Debt	A contract will be entered into in advance between the Funds Transfer Service Provider and a guarantee institution, which agrees to assume the debt of the Funds Transfer Service Provider to the users in the event of the bankruptcy of the Funds Transfer Service Provider. The guarantee institution will directly	(i) the Report states that it is reasonable to obtain the user's consent, which is required under the Civil Code for the assumption of debt, and to have the user and the guarantee institution execute a guarantee contract, which is required for an individual guarantee, through a Funds Transfer Service Provider,

[2] For the details of the Digital Salary Payments, please see our newsletter "Japan Permits Digital Salary Payments" (March 2023).

		repay the users upon such bankruptcy.	which has a contact with the user.
	Individual Guarantee	A guarantee agreement will be entered into in advance between the users of the Funds Transfer Service Provider and the guarantee institution. The guarantee institution will directly repay the users upon the bankruptcy of the Funds Transfer Service Provider.	(ii) The Report proposes guarantee institutions to be limited to banks and other institutions that meet the standards for soundness, to reduce the risk of guarantee institutions becoming bankrupt.
Direct Repayment by Trustees		A trust agreement will be entered into by a trustee and a Funds Transfer Service Provider, with the user as the beneficiary. In the event of the bankruptcy of the Funds Transfer Service Provider, the trustee will repay the agent of the beneficiary using trust assets as the source of funds. The agent will, in turn, repay the user directly.	The Report proposes trustees to be limited to trust companies or trust banks, and agents to be limited to lawyers, certified public accountants, etc., to ensure the proper management of trust assets.

The Report also suggests that regulators should have the authority to issue a deposit order when necessary to protect users, even for Funds Transfer Service Providers that have adopted the new repayment options mentioned above.

According to the Report, the above methods should be considered as new options in addition to the existing methods, and the choice of method should be left to the service providers.

3. Future Outlook

In response to the proposals in the Report, it is expected that the PSA will be revised to add methods that

enable funds to be returned directly to users, in addition to the existing methods.[3] This revision will increase the options for business operators and contribute to the expansion of the business of Funds Transfer Service Providers as these direct repayment methods are also expected to be the basis for the relaxation of the retention regulations for Type 1 Funds Transfer Service Business, as described in Section III. below.

In addition, with regard to the Digital Salary Payments mentioned above, the interim report on the promotion of regulatory reform on 25 December 2024 directed the Ministry of Health, Labour and Welfare to consider, in consultation with the FSA, if the requirements should be reviewed to effectively promote Digital Salary Payments while ensuring the security of workers' salaries. In this regard, it was suggested that safeguarding requirements can be removed or significantly relaxed once the additional methods for returning user funds in the event of bankruptcy of Funds Transfer Service Providers are in place, as these would facilitate directly returning funds to workers through guarantee institutions etc. under the PSA. Hopefully, this proposal will lead to a reasonable review of the requirements for the Digital Salary Payments.

Ⅲ. Relaxation of Restrictions on the Retention of Funds in Type 1 Funds Transfer Services

1. Overview

Under the current PSA, Type 1 Funds Transfer Service Providers that are able to handle funds transfers exceeding JPY 1 million per transaction, are prohibited from receiving funds related to exchange transactions where (i) the amount of funds to be transferred, (ii) the date of transfer, and (iii) the recipient of the funds transfer are not clear, as these must be specified in the funds transfer instruction. As a result, after receiving funds, a Type 1 Funds Transfer Service Provider cannot provide services to users who monitor foreign exchange rates and other factors and issue instructions for funds transfers when the rates are favorable to them.

In addition, Type 1 Funds Transfer Service Providers are not allowed to assume obligations regarding funds transfers beyond the period necessary to process the work related to such transfers, so users are required to pay funds each time they make a transfer and promptly withdraw the funds received.

Furthermore, if a funds transfer service transfer is engaged in both Type 1 and Type 2 funds transfer services, in order to prevent the circumvention of above regulations, the use of the funds received from Type 2 funds transfer services as funds for Type 1 funds transfer services is prohibited. Therefore, if funds received from Type 2 funds transfer services are to be used for a funds transfer using Type 1 funds transfer services

[3] On the other hand, for prepaid payment instruments, there is no obligation to confirm the identity of the holder unless it is a high-value electronic transferable prepaid payment instrument, and there is a risk that the holder of the prepaid payment instrument cannot be accurately identified, so it is not practical to return the funds directly to the holder. Therefore, the Report considers it appropriate to return the funds to the users through the return procedures conducted by the government via deposit, so it is not expected that this rule on direct repayment will be introduced for prepaid payment instruments.

based on the needs of the user, the funds must first be paid out to the user and then paid back into the Type 1 funds transfer service account.

Under the current PSA, strict retention regulations are imposed on Type 1 Funds Transfer Service Providers.

2. Proposal

(1) Extension of Retention Period for Funds Transfer

The Report proposes that a maximum retention period of up to two months be allowed in light of the business model of each service provider, taking into consideration the business practice of taking payments on the last day of the following month.

In addition, to minimize the impact of the bankruptcy of a Funds Transfer Service Provider, the Report proposes to require Type 1 Funds Transfer Service Providers who wish to extend their retention period to adopt methods to enable direct repayment of funds to users mentioned in "II. Diversification of Methods for Returning User Funds in the event of Bankruptcy of a Funds Transfer Service Provider" above and establish systems for early repayment and repayment with a high degree of certainty, in order for user funds to be promptly returned directly in the event of bankruptcy.

Requirement	Description of System
System for early repayment	To manage the amount of the user's claim and to keep track of the user's contact details and account information.
System for repayment with a high degree of certainty	To take one of the following measures (aside from reporting to the regulators): ・(In the case of safeguarding assets by entrustment) take measures to reduce the time lag until the assets are safeguarded to less than one day from two days. ・Take measures to safeguard the maximum amount of funds expected to be received from users through a guarantee or trust (such amount to be determined after reporting to the regulators, based on the business plan at the time of the application for Type 1 funds transfer service approval and performance after the service launch). ・If the amount of received funds exceeds the amount of safeguarded funds at that time, the excess amount shall be managed separately through bank accounts etc. (in this case, a system shall be established to allow regulators to confirm that appropriate management is being implemented, e.g., by

	reporting to the regulators, etc.) until the funds are safeguarded (or until the funds transfer is completed if completed before the funds are safeguarded).

(2) Relaxation of Requirement for Specific Details When Requesting Funds Transfers

With regard to matters that should be specified when requesting for a funds transfer, the Report proposes that, depending on the nature of the funds transfer services, if the 'date on which the funds will be transferred' cannot be specified at the time of the request, then the 'deadline for transferring the funds may be specified' instead. However, the amount of funds to be transferred and the recipient of the funds still need to be specified.

(3) Permission to transfer funds by a Funds Transfer Service Provider that operates both Type 1 and Type 2 funds transfer services

For Funds Transfer Service Providers that operate both Type 1 and Type 2 funds transfer services, the Report proposes that funds received in a Type 2 funds transfer can be transferred in a Type 1 funds transfer but specific instructions must be given for the Type 1 funds transfer on the amount of the funds to be transferred, the date or deadline for transferring the funds, and the recipient of the funds.

In addition, the Report emphasizes the necessity for effective measures to ensure that funds are not accepted in Type 2 funds transfers for purposes of fund transfer transactions in Type 1 funds transfers, to prevent the circumvention of the strict retention regulations. For example, Funds Transfer Service Providers that operate both Type 1 and Type 2 funds transfer services should explain to their users in the service agreement or other documents that the regulations on the retention of funds related to Type 1 and Type 2 funds transfer services are different, and the provision of funds to the service providers for Type 2 funds transfer services for the purpose of Type 1 funds transfers from the outset is prohibited. The examples also include necessary corrective measures, if funds that are retained in relation to Type 2 funds transfer services are frequently transferred in Type 1 funds transfers without reasonable justification.

3. Future Outlook

In response to the proposals in the Report, the PSA, its subordinate regulations and related guidelines are expected to be revised to (i) extend the maximum retention period of funds for Type 1 funds transfer services to two months, (ii) allow users to specify a "deadline for transferring funds" when the "funds transfer date" cannot be specified at the time of the request, and (iii) allow Funds Transfer Service Providers that operate both Type 1 and Type 2 funds transfer services to transfer funds received as part of their Type 2 funds transfer services in Type 1 funds transfers.

With regard to (i) above, it is expected that the specific requirements to be entitled to an extension of the

retention period will be determined in detail, so it will be necessary to keep a close eye on this regulatory update. In addition, with regard to (iii) above, it is expected that the specific details of the "effective measures" that are required to prevent funds from being received in Type 2 funds transfer services for the purpose of using them in fund transfer transactions related to Type 1 funds transfer services will be determined, so it will also be necessary to keep a close eye on the regulations to be revised in this regard.

Due in part to the existing strict regulations on the retention period, there are only four service providers that have been approved for Type 1 funds transfer services as of the end of December 2024, but it is expected that the above relaxation will enable Type 1 Funds Transfer Service Providers to provide funds transfer services to corporate users and lead to the development of a diverse range of services in the future.

Ⅳ. Regulations applied to Cross-Border Collection Agency Services

1. Overview

(1) History of regulations on Collection Agency Services

There is no specific legal definition of "Collection Agency Services (*Shuno-daiko*)", but it is generally understood to mean the act (including cash on delivery) of (i) receiving funds from a debtor on behalf of a creditor who has a monetary claim, and (ii) then transferring those funds to the creditor without physically transporting the funds.[4] Collection Agency Services are not considered funds transfer transactions (*kawase-torihiki*), as settlement is completed at the time of receipt on behalf of the creditor, and the remittance by the Collection Agency Service provider is carried out as its own action (i.e., performance of the obligation to deliver the money received), and it cannot be said that the Collection Agency Service provider has received a request from the payor to transfer the funds.

During the discussions before the enactment of the PSA (which was enforced in 2010), there was opinion that Collection Agency Services may be in violation of the funds transfer regulations, but as a result of the discussions of the Financial System Council, it was decided that it would be difficult to reach a consensus regarding the necessity of such regulations, and that it would be appropriate to address this issue in the future, rather than hastily attempting to develop a regulatory system for it at that time.[5]

Subsequently, the FSA's Financial System Council on 20 December 2019 stated in the "Report of the Working Group on Regulations Regarding Payments and Intermediaries of Cross-Sectional Financial Services" that it would not be necessary to apply the funds transfer regulations to Collection Agency Services in cases where the creditor is a company (or a sole proprietorship), the national government, or a local

[4] "Report of the Working Group on Regulations Regarding Payments and Intermediaries of Cross-Sectional Financial Services" issued by a sub-group of the FSA's Financial System Council

[5] "Development of Regulatory Systems for Payment Services: Promoting Innovation and Protecting Users," issued by Financial System Council, Subcommittee on Financial System, Working Group 2 on January 14, 2009

government, if it is clear from the contract that the debt will be extinguished at the time the debtor makes payment to the Collection Agency Service provider (so the debtor is not at risk of double payment), and appropriate measures are being taken to protect the users of the Collection Agency Services.

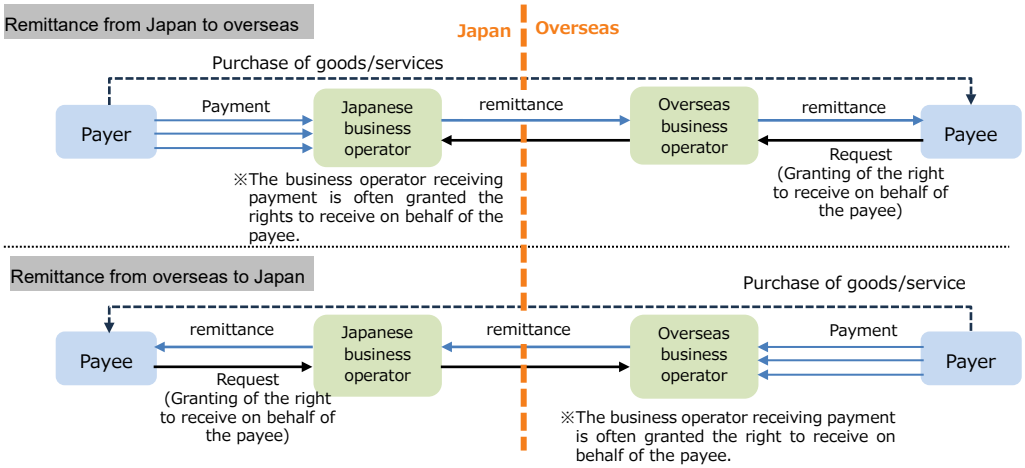
On the other hand, it would be necessary to apply the funds transfer regulations for Collection Agency Services involving individuals (e.g., a "split the bill" app), where the service provider is not involved in the debt relationship between individuals and is simply acting as an intermediary for the transfer of funds, and the economic effect of the service provided can be seen as being the same as when a creditor makes a request for a reverse funds transfer (a funds collection transfer) from a third party service provider.

As for escrow services, there is currently no consensus on the need to apply the funds transfer regulations to these services, so the regulators have decided to continue considering the issue. Since there have been no major social or economic problems in relation to escrow services to date, there was no need to immediately develop a regulatory system for it.

As a result of the above, the revised PSA, which was enacted on 1 May 2021, explicitly stipulated that certain types of the Collection Agency Services, where the creditor is an individual, fall under funds transfer transactions (Article 2-2 of the PSA and Article 1-2 of the Cabinet Office Order on Funds Transfer Service Providers). Furthermore, for Collection Agency Services that do not fall under the funds transfer transactions, the fact that an act does not fall under the acts stipulated in Article 2-2 of the PSA, or that an act falls under the acts stipulated in Article 2-2 of the PSA but does not fall under the requirements stipulated in Article 1-2 of the Cabinet Office Order on Funds Transfer Service Providers does not mean that the act will not immediately fall under funds transfer transactions in the future, since new business models could emerge. Whether or not the act of a business operator falls under funds transfer transactions will ultimately be determined on a case-by-case basis, according to the nature of the transaction, etc. carried out by the business operator (Funds Transfer Business Guidelines I-2).

(2) Overview of the Discussion on the Regulation for Cross-Border Collection Agency Services

Cross-border Collection Agency Services refer to Collection Agency Services in which funds are transferred between Japan and overseas.



(Extract from FSA's explanatory materials regarding the Working Group on Payment Services Systems, etc. dated November 2024)

In 2023, the FSA published the following opinion in the Financial Administrative Monitor[6] regarding the application of the funds transfer regulations to Cross-Border Collection Agency Services: "Since Collection Agency Services involving payments to parties located overseas are more complex in terms of the flow of funds, etc., compared to typical Collection Agency Services (including cash on delivery), where funds are received from the debtor by entrustment or acquisition of claims and transferred to the creditor without physically transporting the funds, there is a clear need to apply the funds transfer regulations due to greater risks in terms of user protection, as well as money laundering and terrorist financing, etc. Therefore, the FSA believes that, in many cases, Collection Agency Service providers handling inbound or outbound overseas payments must be registered as a Funds Transfer Service Provider". In practice, there are cases where the FSA has considered cross-border Collection Agency Services as funds transfer transactions which require a banking license or registration as a Funds Transfer Service Provider.

In addition, the Financial Stability Board (FSB) published the "Recommendations for the Regulation and Supervision of Banks and Non-Banks Providing Cross-Border Remittance Services: Final Report" in December 2024. Based on the principle of "the same regulation should be applied to the same activity and the same risk", the recommendations listed (i) risks to consumer protection, including fraud and the protection of personal data, (ii) operational risks such as cyber threats, (iii) risks of money laundering and terrorist financing, and (iv) other risks such as delayed remittances, and recommended that each jurisdiction should have implemented appropriate regulations and supervision for these risks.

(3) Risks Inherent in Cross-Border Collection Agency Services

In the Working Group, it was pointed out that the following risks are present in cross-border Collection Agency Services.[7]

(i) Risks of double payment

- Since there are generally multiple intermediaries involved in Japan and overseas, there is a possibility that the right to receive payment is not properly established.
- Even if the right to receive payment has been established in the contract, in the event of a dispute, the validity thereof could be uncertain due to issues of private international law (uncertainty of governing law, etc.).
- Payors must be informed that they might bear the burden of overseas court cases, etc.

[6] https://www.fsa.go.jp/monitor/uketsuke_iken_2409.pdf

[7] FSA's explanatory materials regarding the Working Group on Payment Services Systems, etc. dated November 2024

(ii) Risks such as delays in fund settlement

- Generally, since multiple parties are involved in fund settlements across jurisdictions, there is a higher risk of delays in fund settlements, etc. compared to Collection Agency Services that are completed only within Japan.

(iii) Risks to the protection of user information

- As user information handled by Collection Agency Service providers (such as the name of the payor and payment details) could include personal and valuable information, there is a high possibility that user information will be transferred across borders in cross-border Collection Agency Services and, depending on the information protection regulations of the jurisdiction where such information is transferred, there could be a risk of infringement of the rights and interests of users.

(iv) Risks of fraudulent use, such as fraud and money laundering, etc.

- It may be difficult to trace money transfers for fraud cases or illegal gambling through cross-border Collection Agency Services.

2. Proposal

In light of the risk that transactions may lead to illegal activities, or that money laundering or terrorist financing may occur, and that payors or receivers in Japan might lack protection, there is a need to properly implement measures to address the risks identified in the FSB's recommendations, as well as to properly protect payors and receivers. Thus, the Report proposed to apply, as appropriate, the regulations on funds transfer transactions to cross-border Collection Agency Services providers that are considered to be performing the same functions as banks carrying out cross-border remittances or Funds Transfer Service Providers subject to funds transfer regulations, while ensuring that the regulations will not be excessive.

(1) Provision of cross-border Collection Agency Services by a business operator involved in the transaction underlying a monetary claim

In light of the following points, it was decided that, if Collection Agency Services provided by platforms, sales agents, etc. are also involved in the transactions underlying the monetary claims, where the right to receive the proceeds of such monetary claims is granted by the creditor of the monetary claims to the Collection Agency Service providers, and the service providers are appropriately implementing measures against money laundering and the financing of terrorism (hereinafter referred to as "**AML/CFT**"), there is no immediate need to subject these Collection Agency Services to regulations, although this issue should continue to be considered.

- Unlike cross-border remittances carried out by banks or funds transfer business operators, service

providers are typically able to confirm (i) the authenticity of underlying transactions, because these are generally comprised of actions (e.g., provision of goods, etc. and the transfer of funds) that are integral to the transaction as a whole and (ii) whether measures are being taken to prevent services from being used for money laundering or fraud.

- The existence of intermediaries in the underlying transactions also increases the certainty of the recipient collecting funds.
- There have been no major social or economic problems in relation to these services to date.

However, if there is suspicion that the service provider is actively involved in illegal activities, such as online casinos or investment fraud, the above conditions regarding AML/CFT will not be satisfied, and it would be necessary to apply funds transfer regulations.

(2) Escrow services

Escrow services are provided in various situations, such as transactions on online marketplaces provided by platforms or overseas cash on delivery. Whether or not the escrow service provider is involved in the transaction underlying the monetary claim, they prevent problems between the parties by ensuring that both parties perform their obligations simultaneously.

Although there is a view that, escrow services serving a function should not be a reason not to apply funds transfer regulations, there is no consensus at present on whether the funds transfer regulations should be applied to escrow services, especially since there have been no major social or economic problems in relation to these services in Japan. Thus, it was decided that, if the right of receipt has been appropriately granted to the Collection Agency Service providers in relation to an escrow, there is no immediate need to subject escrow services to regulations, but this issue should continue to be considered.

(3) Provision of cross-border Collection Agency Services by a business operator that is not involved in the transaction underlying a monetary claim

There is a proposal to apply the funds transfer regulations to business operators providing cross-border Collection Agency Services if they are not involved in the transactions underlying the monetary claims, since they should be considered to have the same function as banks and funds transfer business operators performing cross-border remittance services.

However, there is no immediate need to apply the funds transfer regulations to the following types of cross-border Collection Agency Services:

(i) Services provided by a business operator with an established financial ties with the payee, e.g., capital relationship.

(ii) Services expected to be provided by a business operator or services regulated under other laws and regulations (such as settlement operations between credit card issuers and acquirers).

There is no immediate need to apply funds transfer regulations to these services because, for (i) above, there is not necessarily a high level of operational risk or AML/CFT risk, etc., and for (ii) above, certain risk mitigation measures are being taken under other laws and regulations.

(4) Summary

The Report states that funds transfer regulations should be applied to cross-border Collection Agency Services that are considered to have the same function as cross-border remittance services conducted by banks and Funds Transfer Service Providers that are subject to the funds transfer regulations. Specifically, funds transfer regulations should be applied to the following types of cross-border Collection Agency Services:

(i) Collection Agency Services for overseas online casino wagers
(ii) Collection Agency Services for overseas investment cases
(iii) Collection Agency Services that are outsourced by overseas EC business operators and only involve settlement
(iv) Collection Agency Services for inbound travelers to settle payments in Japan

Furthermore, with regard to (i) and (ii) above, the Report suggests that even if a business operator who provides Collection Agency Services for overseas online casinos or unregistered foreign financial instruments business operators applies for registration as a Funds Transfer Service Provider, it will not be approved, and they will be subject to control as a business operator who provides remittance services without registration.

In addition, the Report points out that there are cases where (iii) and (iv) above may be exempt from the funds transfer regulations.

- Regarding (iii) above, in cases where the business operator is not formally involved in the transaction underlying the monetary claims, but is involved in the in the underlying transaction as part of its overall business model (e.g., providing Collection Agency Services by outsourcing under the guidance and supervision of an overseas EC business operator), the need to apply the regulation to specific services depends on the function and risk, according to individual transaction types and business models.
- Regarding (iv) above, the need to apply regulations depends on whether there are risk mitigation measures, etc. under other laws and regulations on payment instruments used by inbound travelers.

3. Future Outlook

In response to the proposals in the Report, the PSA is expected to be revised to apply, in principle, the

funds transfer regulations to cross-border Collection Agency Services that are considered to have the same function as cross-border remittance services carried out by banks and Funds Transfer Service Providers that are subject to the funds transfer regulations.

However, given that some types of cross-border Collection Agency Services should be exempted from the funds transfer regulations, it is necessary to clarify the scope of the exemptions in the Report, and it is expected that discussions will also progress on other types of exemptions. After the PSA is revised, there will be an urgent need to clarify the types of activities subject to regulations and the types of exemptions, and it is expected that the details will be clarified in subordinate regulations and related guidelines.

As mentioned above, although the introduction of regulations concerning cross-border Collection Agency Services was prompted by the need to regulate the collection of wagers for overseas online casinos and the collection of funds for unregistered overseas financial instruments business operators, etc., the cross-border Collection Agency Services currently being provided are often used in more complex schemes rather than the simple types mentioned above. Businesses handling cross-border payments and their service providers must pay close attention to the above regulations and practices.

Ⅴ. Use of Prepaid Payment Instruments for Donation

1. Overview

"Prepaid Payment Instruments" means any of the following instruments:

(i) certificates, electronic devices, or other items (hereinafter referred to as "certificates, etc.") or numbers, markings, or other signs issued in exchange for consideration equivalent to the amount recorded in the certificate, etc. or recorded using electronic or magnetic means which can be used for the purpose of paying consideration for the purchase or lease of goods, etc. or services from the issuer or the person designated by the issuer (hereinafter referred to as the "issuer, etc.") by way of presentation, delivery, notification, or other means; or,

(ii) certificates, etc. or numbers, markings, or other signs issued in exchange for consideration equivalent to the quantity of goods, etc. or services recorded in the certificate, etc. or recorded using electronic or magnetic means (including additions to the quantity of goods, etc. or services recorded in the certificate, etc. by electronic or magnetic means in exchange for consideration equivalent to the recorded additional quantity) which can be used for the purpose of claiming the delivery or provision of those goods, etc. or services from the issuer, etc. by way of presentation, delivery, notification, or other means.

As described above, Prepaid Payment Instruments can be used to purchase "goods, etc.", which is defined

as goods and other property with value (excluding JPY and foreign currencies) under the Article 2, Paragraph 6 of the PSA. However, since the FSA does not consider "donations" as "goods, etc." (2023 Public Comment Response No. 14), under the current PSA, donations cannot be made using Prepaid Payment Instruments.

On the other hand, it is possible to use Prepaid Payment Instruments to make a "Hometown Tax (*furusato nozei*)" payment, even if this payment is similar to a donation (see "Examples of Consultations that are Effective to Share Widely (regarding the PSA)[8]). In addition, in the practice of credit card businesses, donations made by credit card are also accepted as "purchasing goods or rights"[9].

Recently, there has been a growing need to use Prepaid Payment Instruments, which are a major cashless payment method, for donations. According to the "Proposal on Reforms Related to Decentralization of Power in 2024,[10]" it should be possible to make donations using Prepaid Payment Instruments to local governments, duly- established legal entities, and public interest corporations that are considered to have particularly high public interest.

2. Proposal

The Report states that enabling donations through prepaid payment instruments will meet the need for donations other than cash, contribute to the development of a donation culture in Japan, and be recognized as having political significance from the perspective of promoting public interest. On the other hand, the Report also points out that, if donations through Prepaid Payment Instruments are allowed, it is necessary to be aware of the risk of money laundering and fraud that may be committed by abusing the donation scheme, as well as the risk of circumventing regulations for funds transfer transactions *(kawase-torihiki)*. It also mentioned that it is not appropriate to allow the use of Prepaid Payment Instruments for all donations, and it is desirable to impose certain restrictions on the recipients and the maximum amount of donations.

As a result, it was proposed that donations using Prepaid Payment Instruments should only be possible if the following two conditions are satisfied: (i) recipients of donations should be limited to national and local governments, and duly-established legal entities, etc.; and (ii) the maximum amount of donations that can be received in a single payment using Prepaid Payment Instruments should be set between JPY 10,000 and JPY 20,000 per donation.

However, it has also been pointed out that, in light of the number of cases of fraud involving gift cards, it would not be appropriate to allow donations to be made using Number Notification Type Prepayment Payment Instruments.

[8] https://www.fsa.go.jp/common/noact/kaitou_2/kessai/index.html
[9] In this regard, the FSA states that donations made by credit card are outside the scope of the FSA's jurisdiction (2023 Public Comment Response No. 14).
[10] https://www.cao.go.jp/bunken-suishin/teianbosyu/doc/r06/tb_r6_kohyou_04_1_fsa.pdf

3. Future Outlook

In response to the proposals in the Report, it is expected that the PSA will be revised to allow donations to be made using Prepaid Payment Instruments, subject to restrictions on the recipients and maximum amount of donations.

However, details of these restrictions will be considered in the near future, and it is expected that the use of Number Notification Type Prepayment Payment Instruments for donations will not be permitted. Therefore, we must pay close attention to the specific requirements for accepting donations using Prepaid Payment Instruments.

In addition, since the FSA is expected to consider the specifics of a framework for ensuring that donations using Prepaid Payment Instruments comply with AML/CFT requirements and fraud prevention, etc., we must pay attention to the specific issues such as identity verification and monitoring donation recipients.

Ⅵ. Relationship between Advance Payment Services and Lending

1. Overview

There was a discussion in the Working Group about whether advance payment services (where a service provider pays funds in advance for a client, subject to reimbursement by that client) ("**Advance Payment Services**") fall under the category of "lending" under the Money Lending Business Act[11].

By way of background, in recent years, various types of Advance Payment Services have been provided, such as the BNPL (buy now, pay later) service and the BPSP (bill payment service provider) service. There is a high risk of these services being used as gateways to excessive credit or being misused by unscrupulous merchants, as these have been misused in fraudulent subscription sales.

In addition, the FSA has provided certain opinions on the applicability of lending regulations for salary advance services, advance payment of medical expenses, advance payment collection agency services for educational institutions, and payment agency services for monetary debts through the System to Remove Grey Zone Areas or No-Action Letter System since 2018.

[11] The Money Lending Business Act defines 'lending' as 'the lending of money or the intermediation of money lending (including the discounting of bills, the sale of collateral, and other methods of delivering money, as well as the intermediation of the exchange of money using these methods)'.

2. Proposal

The Report points out that it is difficult to determine whether a service constitutes "lending" based on a uniform standard, as there are various legal structures and schemes for Advance Payment Services. However, it would be appropriate to establish and use a certain decision-making framework to determine whether a service constitutes "lending", taking a comprehensive look at the specific circumstances of each Advance Payment Service, to ensure appropriate user protection and predictability for service providers, and promote the sound development of services.

More specifically, to regard an Advance Payment Service as "lending", the Report suggests that, based on the purpose of the Money Lending Business Act of protecting the interests of borrowers, the actual circumstances of the service should be taken into account to determine whether it has the same economic effect as a loan, focusing on factors such as (1) the extent to which it supplements the borrower's solvency, and (2) the extent to which it takes into account the borrower's creditworthiness, and in doing so, the Report suggests that the method of setting fees, the period of advance payment, and the attributes and usage patterns of the borrower should be taken into consideration as a whole.

3. Future Outlook

As mentioned above, the Money Lending Business Act is not expected to be revised in relation to Advance Payment Services as "lending". However, certain criteria for determining whether an Advance Payment Service constitutes "lending" could be included in supervisory guidelines. Thus, providers of Advance Payment Services are expected to carefully consider whether their services fall under the category of regulated lending activities based on the criteria.

Ⅶ. Conclusion

As described above, it is expected that revised regulations to add methods to safeguard the assets of Funds Transfer Service Providers will increase the number of Type 1 funds transfer services, and relaxed regulations on the retention of funds for Type 1 funds transfer services will expand the scope of Type 1 funds transfer services.

In addition, as cashless payments are rapidly becoming more widespread, the relaxation of regulations on the use of Prepaid Payment Instruments for donations is also expected to increase the use of Prepaid Payment Instruments and lead to improved convenience for users.

As for Cross-Border Collection Agency Services, although funds transfer regulations are expected to be introduced, since there are various types of Cross-Border Collection Agency Services, businesses

conducting cross-border funds transfers, whether directly or through other service providers, should monitor specific trends during the discussions on the amendment of laws and regulations, to see which types of services will be subject to the funds transfer regulations. In addition, as it is expected that the supervisory guidelines will clearly state certain criteria for determining whether a service constitutes "lending", existing service providers should also monitor the regulatory updates.