GLI GLOBAL LEGAL INSIGHTS

Blockchain & Cryptocurrency Regulation

2024

Sixth Edition

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glg Global Legal Group

ENTERPRISE ETHEREUM ALLIANCE

Value Technology Foundation

WSBA WALL STREET BLOCKCHAIN ALLIANCE

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General overview

In Japan, there is no omnibus regulation governing blockchain-based tokens. The legal status of tokens under Japanese law is determined based on their functions and uses.

For example, cryptocurrencies and utility tokens such as BTC, ETH, etc. are regulated as "Crypto Assets" under the Payment Services Act (the "**PSA**"). Business operators who engage in the business of buying, selling or exchanging Crypto Assets (as well as in the intermediation of such activities), or in the management of Crypto Assets for the benefit of others, are required to undergo registration as a provider of Crypto Asset Exchange Services ("**CAES**" and a provider of CAES, a "**CAESP**"). Currency denominated stablecoins such as USDC and USDT are regulated as "Electronic Payment Instruments" ("**EPIs**") under the PSA. Business operators who engage in the business of buying, selling or exchanging EPIs (as well as in the intermediation of such activities), or in the management of EPIs for the benefit of others, are required to undergo registration as an Electronic Payment Instruments Exchange Service Provider ("**EPIESP**"). However, so-called algorithmic stablecoins that are not collateralised by fiat currency but whose values are linked to fiat currency through algorithms do not fall within the category of EPIs as they do not qualify as Currency Denominated Assets. Instead, such algorithmic stablecoins will constitute Crypto Assets if they are transferable or tradeable *vis-à-vis* unspecified parties on a blockchain.

So-called "security tokens", which represent shares, bonds or fund interests in tokens, are regulated under the Financial Instruments and Exchange Act (the "**FIEA**") as electronically recorded transferable rights ("**ERTRs**") to be indicated on securities, etc. ("**ERTRIS, etc.**"). A business operator who engages in the business of offering (including the handling of such offers), buying, selling or exchanging ERTRIS, etc. (as well as in the intermediation of such activities) is required to undergo registration as Type I Financial Instruments Business Operators ("**Type I FIBOs**").

Tokens other than those mentioned above, such as non-fungible tokens ("**NFTs**"), which have no economic function as a means of payment due to their unique characteristics, will not be regulated in principle under the current regulatory framework.

Introduction of regulatory framework for stablecoins

On March 4, 2022, the "Bill for Partial Amendment to the Act on Payment Services Act, etc. for the Purpose of Establishing a Stable and Efficient Funds Settlement System" (the "**Amendment Act**"), which aims to introduce new regulations in respect of stablecoins, was submitted to the Diet. The Amendment Act was approved on June 3, 2022 and came into effect on June 1, 2023.

Under the Amendment Act:

(i) EPIs (i.e., currency denominated stablecoins) are distinguished from other currency denominated assets by the following factors: (i) whether they can be used as payment for consideration to unspecified persons; and (ii) whether they may be purchased from or sold to unspecified persons. Based on this, prepaid payment instruments and electronic currency that are issued by fund transfer service providers do not satisfy condition (i), as their issuers would centrally manage the balance of each user and the scope of stores (that is, member stores) that accept the relevant prepaid payment instruments and electronic money. Additionally, digital currencies, notwithstanding that they are issued on blockchains, will not satisfy condition (ii) if their issuers have taken technical measures that restrict the transfer of such digital currencies only to persons who have been verified as unproblematic under know-your-customer ("**KYC**") checks at the time of transaction, and if the issuers' consent or other involvement is required for every transfer of the digital currencies. Consequently, stablecoins issued on a permissionless blockchain would typically be deemed EPIs, as new holders of such stablecoins generally are not required to undergo KYC checks and transfers of such stablecoins do not require the involvement of their issuers.

(ii) Those who are permitted to issue EPIs directly to Japanese residents are limited to banks, fund transfer service providers, trust banks or trust companies that are licensed in Japan. This is because the issuance and redemption of EPIs constitute "fund remittance transactions" (*kawase-torihiki*).

(iii) It is not possible for a CAESP to list EPIs on any exchange or manage EPIs for its users without being registered as an EPIESP.

(iv) An EPIESP is subject to anti-money laundering/counter-financing of terrorism ("**AML/CFT**") regulations, including a "travel" rule. More specifically, an EPIESP, when transferring EPIs to any other EPIESP, is required to provide a customer's identification information to such other EPIESP. Moreover, an EPIESP who sends or receives EPIs to or from overseas virtual asset service providers ("**VASPs**") on a regular basis is required to check whether such VASPs are conducting appropriate due diligence on its users for AML/CFT purposes.

Recent developments in respect of NFTs

Recently, digital art and digital trading cards represented by NFTs, which are non-replaceable digital tokens issued on a blockchain, have been traded for considerable amounts. As a result, NFTs have been rapidly gaining attention in Japan. While digital data is inherently free and easy to copy, NFTs are considered innovative because they involve creation of unique, one-of-a-kind data based on blockchain technology.

From the regulatory standpoint, NFTs would not constitute securities or ERTRIS, etc. under the FIEA if their holders do not share in profits or receive dividends. In addition, where NFTs are non-fungible, non-substitutable, and not used as a means of payment, they would not be deemed Crypto Assets under the PSA.

According to the FSA Administration Guidelines on Crypto Assets ("**Crypto Asset Guidelines**"), dated March 24, 2023 and issued by the Financial Services Agency of Japan (the "**FSA**"), one of the factors for determining whether a token constitutes a Type I Crypto Asset (defined below) is whether it is "an asset capable of being purchased or sold with legal fiat currency or crypto assets under socially accepted norms". Specifically, a token that satisfies items (i) and (ii) below generally will not constitute a Type I Crypto Asset. The same applies to the determination of whether a token constitutes a Type II Crypto Asset (defined below):

(i) The issuer has made it clear that the token is not intended to be used as payment for goods, etc. to unspecified parties. This can be achieved by, for example, stating clearly in the terms and conditions of the issuer or its business-handling service provider, or in the product description, that use of the token as a means of payment to unspecified parties is prohibited, or that the token or related system is designed in a way that does not enable it to be used as a means of payment to unspecified parties).

(ii) In situations where use of the token as a means of payment for goods, etc. to unspecified parties is permitted, certain requirements on the price and quantity of the relevant goods, etc., and on the technical characteristics and specifications of the token, must be met. For example, at least one of the following characteristics must be present:
   (a) the minimum value per transaction must be sufficiently high (i.e., JPY1,000 or more); or
   (b) the number of tokens issuable, in proportion to the aforementioned minimum value of a transaction, is limited (i.e., not exceeding 1 million).

Central bank attitudes toward cryptocurrencies

Under Japanese law, a Crypto Asset is neither treated as "money" nor equated with fiat currency. No Crypto Asset is supported by the Japanese government or the central bank of Japan (the Bank of Japan, or the "**BOJ**").

With that said, it should be noted that on July 2, 2020, the BOJ released a report entitled "Technological Challenges in Having Central Bank Digital Currencies Function as Cash Equivalents", summarising the technical issues involved in getting central bank digital currencies ("**CBDCs**") to function as cash equivalents. In the report, the BOJ also mentioned that it may, through feasibility studies, verify the possibility of using CBDCs as cash equivalents. In line with this, the BOJ conducted "Proof-of-Concept Phase 1" from April 2021 to March 2022 to establish an experimental environment using several design patterns for the CBDC ledger, which is the foundation of the CBDC system, and to verify whether the basic functions of CBDCs could be properly executed. In "Proof-of-Concept Phase 2", conducted from April 2022 to March 2023, following Phase 1, the BOJ added several peripheral functions to CBDCs, and particularly to functions related to the CBDC ledger verified in Phase 1, in order to ascertain certain important processing performance and technical capabilities in respect of the CBDC ledger. In Phase 2, the BOJ also looked at the possibility of applying new technologies to data models and databases in respect of CBDCs. The government of Japan has so far not decided whether to issue CBDCs in Japan, but discussions continue to be held in this regard. On its part, the BOJ believes it important to continue preparations for any future issuance of CBDCs, including the continued conduct of technical demonstration tests, so as to be able to respond in a timely manner to future changes in the external environment.

Cryptocurrency regulation

Under Japanese law, "Crypto Asset" is not listed as a type of "Security" as defined in the FIEA (please note, however, that a certain type of token may be subject to the regulation of the Act, as discussed later in the below section entitled "**Sales regulation**"). The PSA defines "Crypto Asset", and requires a person who provides CAES to be registered with the FSA. A person who conducts CAES without registration will be subject to criminal proceedings and punishment.

Therefore, the respective definitions of Crypto Asset and CAES are of crucial importance.

Definition of Crypto Asset

The term "Crypto Asset" is defined in the PSA as:

(i) proprietary value that may be used to pay an unspecified person the price of any goods, etc. purchased or borrowed or any services provided and that may be sold to or purchased from an unspecified person (limited to that recorded on electronic devices or other objects by electronic means and excluding Japanese and other foreign currencies and Currency Denominated Assets; the same applies in the following item) and that may be transferred using an electronic data processing system ("**Type I Crypto Asset**"); or

(ii) proprietary value that may be exchanged reciprocally for proprietary value specified in the preceding item with an unspecified person and that may be transferred using an electronic data processing system ("**Type II Crypto Asset**").

Though the definition is complicated, in short, a cryptocurrency that is usable as a payment method to an unspecified person and not denominated in a fiat currency falls under the definition of Crypto Asset.

"Currency Denominated Assets" means any assets that are denominated in Japanese or other foreign currency and do not fall under the definition of Crypto Asset. For example, prepaid e-money cards usually fall under Currency Denominated Assets. If a coin issued by a bank is guaranteed to have a certain value of a fiat currency, such a coin will likely be treated as a Currency Denominated Asset rather than a Crypto Asset.

Definition of Crypto Asset Exchange Services

Under the PSA, the term "Crypto Asset Exchange Services" (or CAES) means any of the following acts carried out as a business:

(a) sale or purchase of Crypto Assets, or the exchange of a Crypto Asset for another Crypto Asset;

(b) intermediating, brokering or acting as an agent in respect of the activities listed in item (a);

(c) management of customers' money in connection with the activities listed in items (a) and (b); or

(d) management of customers' Crypto Assets for the benefit of another person.

It should be noted that the PSA designates item (d) (management of customers' Crypto Assets for the benefit of another person) as a type of CAES. Consequently, management of Crypto Assets without the sale and purchase thereof ("**Crypto Asset Custody Services**") is included in the scope of CAES. Therefore, a person engaging in Crypto Asset Custody Services needs to undergo registration as a CAESP. In this context, the Crypto Asset Guidelines describes the "management of customers' Crypto Assets for the benefit of another person" as follows: "[A]lthough whether or not each service constitutes the management of Crypto Assets should be determined based on its actual circumstances, a service constitutes the management of Crypto Assets if a service provider is in a position in which it may transfer its users' Crypto Assets (for example, if such service provider owns a private key with which it may transfer users' Crypto Assets solely or jointly with its related parties, without the users' involvement)." Accordingly, it is understood that if a service provider merely provides its users with a Crypto Asset wallet application (i.e., a non-custodial wallet) and private keys are managed by the users themselves, such a service would not constitute a Crypto Asset Custody Service.

Principal regulations on CAESPs

Regulations for the handling of new Crypto Assets

Under the PSA, a CAESP who proposes to handle a new Crypto Asset is required to notify the FSA in advance. Additionally, the self-regulatory rules of the Japan Virtual and Crypto

Assets Exchange Association (the "**JVCEA**"), a self-regulatory organisation established under the PSA, require a member CAESP who wishes to deal in a new Crypto Asset to first conduct an internal assessment of such Crypto Asset and submit an assessment report to the JVCEA ("**JVCEA Pre-Assessment**"). As no new Crypto Asset can be handled if the JVCEA raises any objection, a member is effectively required to obtain the JVCEA's approval before it can begin to handle a new Crypto Asset.

In this regard, with effect from December 26, 2022, the JVCEA self-regulatory rules were amended to establish (i) a "Green List System" under which certain member CAESPs ("**Green List Eligible Members**") may be exempted from JVCEA Pre-Assessment in respect of certain Crypto Assets designated by the JVCEA, and (ii) the "Crypto Asset Self-Check System" ("**CASC System**") under which certain member CAESPs ("**CASC Eligible Members**") may generally be exempted from JVCEA Pre-Assessment except in certain specific circumstances. Under the Green List System, Crypto Assets that meet all of the following four criteria would be deemed "crypto assets widely handled in Japan" by the JVCEA (and designated as such on the JVCEA's webpage). No JVCEA Pre-Assessment is required for "crypto assets widely handled in Japan" if such Crypto Assets are handled by a Green List Eligible Member, for example:

(a) Crypto Assets that have been handled by three or more member CAESPs;
(b) Crypto Assets that have been handled by one member CAESP for at least six months;
(c) Crypto Assets for which the JVCEA has not set ancillary conditions for handling; and
(d) Crypto Assets that have not been deemed inappropriate for the Green List System by the JVCEA for any other reason.

It should be noted that, under the Green List System, only "crypto assets widely handled in Japan" may be exempted from JVCEA Pre-Assessment. What this means is that JVCEA Pre-Assessment is still required for other Crypto Assets in the same way as before (unless such Crypto Assets have undergone the CASC System).

Additionally, JVCEA Pre-Assessment is required only with respect to Crypto Assets being handled for the first time in Japan. Crypto assets handled by a Green List Eligible Member or a CAESP Eligible Member are not subject to JVCEA Pre-Assessment.

Protection of users' property

In Japan, due to a series of incidents involving leakage of Crypto Assets from CAESPs, strict regulations have been introduced for the protection of user property.

Under such regulations, a CAESP that manages users' fiat currency and Crypto Assets must segregate such property from its own property.

For purposes of fiat currency management, such currency must be held in trust with a trust bank or trust company for protection against the CAESP's bankruptcy.

In the area of Crypto Asset management, stringent rules, as set forth below, have been put in place to protect users from leakages of Crypto Assets and from the bankruptcy of a CAESP:

(a) A CAESP must manage users' Crypto Assets and its own Crypto Assets in separate wallets.
(b) A CAESP must manage at least 95% of users' Crypto Assets in wallets that are not connected to the Internet (so-called "cold wallets").
(c) A CAESP that manages less than 5% of its users' Crypto Assets in a wallet other than a cold wallet (so-called "hot wallets") must manage the same type and amount of its own Crypto Assets ("**Redemption Guarantee Crypto Assets**") in a cold wallet to protect users against the risk of leakages of Crypto Assets from hot wallets.

(d) Users will have preference rights to repayment over the segregated Crypto Assets and Redemption Guarantee Crypto Assets. Such priority security interest is specifically stipulated in the PSA.

In addition to the above, CAESPs are required to have their segregation of fiat currency and Crypto Assets audited annually by a certified public accountant or auditing firm.

Other regulations on the conduct of CAESPs

In addition, the following regulations are imposed on the conduct of CAESPs:

(a) CAESPs are required to take such measures as necessary to ensure the security of important information, such as personal information and information on private keys to Crypto Assets. They are also required to establish a risk management system to prevent system failures and cyber incidents. Establishment of contingency plans to deal with exigencies and provision of related training are also required.
(b) CAESPs are required to provide users with information such as an overview of each Crypto Asset handled by them, details of transaction rules and fees, information on the assets received from users, and users' transaction history.
(c) CAESPs are subject to regulations regarding CAES advertising and solicitation. False and misleading representations, as well as representations promoting the trading of Crypto Assets for the sole purpose of profit, are prohibited.
(d) CAESPs are required to establish internal control systems for responding to user complaints in a fair and appropriate manner, and to take measures to resolve disputes through alternative dispute resolution procedures.

Registration process for CAESPs

Applicants for CAESP status are required to be (i) stock companies (*kabushiki-kaisha*), or (ii) foreign CAESPs with an office(s) and representative in Japan and registered or licensed in the foreign country. Accordingly, any foreign entity wishing to register as a CAESP must establish either a subsidiary (in the form of *kabushiki-kaisha*) or a branch in Japan. However, there are no cases where registration in the form of a branch has been approved by the FSA. So far, all foreign CAESPs have established subsidiaries in Japan and have obtained registration of those subsidiaries.

In addition, applicants must have: (a) a sufficient financial base (i.e., a minimum capital of JPY10 million and positive minimum net assets); (b) a satisfactory organisational structure and certain internal systems for the appropriate and proper provision of CAES; and (c) internal systems to ensure compliance with applicable laws and regulations.

Applicants must submit a registration application containing, among others: (i) its trade name and address; (ii) the amount of its capital; (iii) the names of its director(s); (iv) the names of the Crypto Assets it will handle; (v) the contents of and the means by which it will provide the relevant CAES; (vi) the name(s) of outsourcee(s) (if any) and the address(es) thereof; and (vii) the method by which the management of its users' Crypto Assets will be segregated from the management of its own Crypto Assets.

A registration application has to be accompanied by certain documents, including: (i) a document pledging that there are no circumstances constituting grounds for refusal of registration; (ii) an extract of the certificate of residence of the applicant's directors, etc.; (iii) a résumé of the applicant's directors, etc.; (iv) a list of the applicant's shareholders; (v) the applicant's financial documents; (vi) documents containing particulars regarding the establishment of an internal system for ensuring proper and secure provision/performance of CAES by the applicant; (vii) an organisational chart in respect of the applicant; (viii) the applicant's internal rules; and (ix) a form of the contract to be entered into with users.

During the registration process, the FSA will request for applicants to complete a checklist consisting of more than 400 questions, in order to confirm that the applicants have established internal systems for the proper and secure provision of CAES. In addition, the FSA will separately prepare a detailed progress chart to confirm the checking process. The registration process essentially serves as a due diligence exercise by the FSA, by which the FSA will determine whether to approve an applicant's registration. "Registration", if granted, will be akin to the issuance of a "licence" to the applicant. In order to proceed with such a registration process, it is necessary to add a number of executives and employees with practical experience in Japanese financial institutions to the organisational chart, to develop dozens of internal regulations equivalent to those of financial institutions, to invest in systems to ensure that the services provided are appropriate, and to go through checks by the FSA.

Upon registration, the applicant's name will be added to the registry of CAESPs, which is made publicly available by the FSA.

Sales regulation

Overview

Cryptocurrencies (including Crypto Assets) do not fall within the definition of "Securities" under the FIEA, and the sale of Crypto Assets or tokens (including initial coin offerings, or "**ICOs**") is not specifically or directly regulated by the FIEA (although a certain type of token may be subject to the FIEA, as discussed below).

There are various types of tokens issued by way of ICO, and Japanese regulations applicable to ICOs vary according to the respective schemes.

Main types of tokens and applicable regulations

Crypto Asset type

If a token falls within the definition of Crypto Asset, it will be subject to Crypto Asset regulations under the PSA. In accordance with current practice, tokens that are (i) issued via ICO and already dealt with by Japanese or foreign exchanges would fall within the definition of Crypto Asset under the PSA, based on the rationale that exchange markets for such tokens must already be in existence, and (ii) not yet dealt with by Japanese or foreign exchanges, but are not restricted by their issuers from being exchanged with Japanese or foreign fiat currencies or Crypto Assets, would likely fall within the definition of Crypto Asset under the PSA.

According to the JVCEA's "Rules for Selling New Crypto Assets" (the "**ICO Rules**"), there are two types of ICO, which can be described as follows: (i) an offering where an Exchange Provider issues new tokens and sells such tokens by itself; or (ii) an offering where a token issuer delegates Exchange Providers to sell the newly issued tokens. Generally speaking, the ICO Rules stipulate the following requirements for each type of ICO:

(i) maintenance of a structure for review of a targeted business that raises funds via ICO;
(ii) information disclosure of the token, the token issuer's purpose for the funds, or the like;
(iii) segregated management of funds (both fiat and Crypto Assets) raised by ICO;
(iv) proper account processing and financial disclosure of funds raised by ICO;
(v) safety assurance of the newly issued token, its blockchain, smart contract, wallet tool, and the like; and
(vi) proper valuation of newly issued tokens.

Securities (equity interest in an investment fund) type

The concept of ERTRs is defined in the FIEA. This clarified the scope of tokens governed by the FIEA. Specifically, the concept of ERTRs relates to the rights set forth in Article 2,

Paragraph 2 of the FIEA that are represented by proprietary value that is transferable by means of an electronic data processing system (but limited only to proprietary values recorded in electronic devices or otherwise by electronic means), excluding those rights specified in the relevant Cabinet Office Ordinance in light of their negotiability and other factors. Although Article 2, Paragraph 2 of the FIEA refers to rights of various kinds, tokens issued in "security token offerings" ("**STOs**") are understood to constitute, in principle, "collective investment scheme interests" ("**CISIs**") under the FIEA. CISIs are deemed to have been formed when the following three requirements are met: (i) investors (i.e., rights holders) invest or contribute cash or other assets to a business; (ii) the cash or other assets contributed by investors are invested in the business; and (iii) investors have the right to receive dividends of profits or assets generated from investments in the business. Tokens issued under STOs would constitute ERTRs if the three requirements above are satisfied.

Simply put, rights treated as "Paragraph 2 Securities" (i.e., rights that are deemed securities pursuant to Article 2, Paragraph 2 of the FIEA) and represented by negotiable digital tokens will be treated as Paragraph 1 Securities unless they fall under an exemption. As a result of the application of disclosure requirements to ERTRs, issuers of ERTRs are in principle required, upon making a public offering or secondary distribution, to file a securities registration statement and issue a prospectus. Any person who causes other persons to acquire ERTRs or who sells ERTRs to other persons through a public offering or secondary distribution must deliver a prospectus to such other persons in advance or at the same time.

As ERTRs constitute Paragraph 1 Securities, registration as a Type I FIBO is required for the purposes of selling, purchasing or handling the public offering of ERTRs in the course of a business. In addition, any ERTR issuer who solicits acquisition of such ERTR (i.e., undertaking an STO) is required to undergo registration as a Type II FIBO, unless such issuer qualifies as a specially permitted business for qualified institutional investors.

Prepaid card type

If the tokens are similar in nature to prepaid cards and can be used as consideration for goods or services provided by token issuers, they may be regarded as prepaid payment instruments, which are subject to the relevant regulations of the PSA (in which case the regulations in respect of Crypto Assets in the same Act would not be applicable).

Introduction to regulations governing Crypto Asset Derivatives Transactions

The FIEA regulates Crypto Asset Derivatives Transactions by stipulating certain regulations in respect of Crypto Asset Derivatives Transactions, in order to protect users and ensure that such transactions are conducted appropriately. Specifically, for purposes of subjecting Derivatives Transactions involving "Financial Instruments" or "Financial Indicators" to certain entry regulations and rules of conduct issued under the FIEA, the FIEA includes "Crypto Assets" and "standardized instruments created by a Financial Instruments Exchange for the purposes of facilitating Market Transactions of Derivatives by standardizing interest rates, maturity periods and/or other conditions of (Crypto Assets)" in the definition of "Financial Instruments". Further, under the FIEA, prices, interest rates, etc. in respect of Crypto Assets constitute "Financial Indicators".

Since Crypto Assets are included in the definition of Financial Instruments, the conduct of Over-the-Counter ("**OTC**") Derivatives Transactions related to Crypto Assets or related intermediary (*baikai*) or brokerage (*toritsugi*) activities will also constitute Type I Financial Instruments Business. Accordingly, business operators engaging in these transactions need to undergo registration as FIBOs in the same way as business operators engaging in foreign exchange margin trading.

Any entity that intends to be a FIBO engaging in Type I Financial Instruments Business is required to meet certain asset requirements, including having:
(i) a stated capital of at least JPY50 million;
(ii) net assets of at least JPY50 million; and
(iii) a capital-to-risk ratio of at least 120%.

It should be noted that, traditionally, the registration requirements under the FIEA are not applicable to non-securities-related Derivatives Transaction services provided to certain professional customers. However, the registration requirements will be applicable to Crypto Asset Derivatives Transactions, regardless of the type of customers involved, in light of the high-risk nature of Crypto Asset Derivatives Transactions. However, foreign Crypto Asset Derivative Business Operators (i.e., companies that engage in Crypto Asset Derivatives Transactions in the course of a business in a foreign country, under applicable foreign laws and regulations) conducting OTC Crypto Asset Derivatives Transactions with certain professional entities in Japan will be excluded from the registration requirements in respect of the FIBOs. Such professional entities are:
(i) the government of Japan or the BOJ;
(ii) FIBOs and financial institutions that engage in OTC Crypto Asset Derivatives Transactions in the course of a business;
(iii) financial institutions, trust companies or foreign trust companies (provided they conduct OTC Crypto Asset Derivatives Transactions only for investment purposes or on the account of trustors under trust agreements); and
(iv) FIBOs who engage in investment management business (provided that such entities engage in activities related to investment management business).

Introduction to regulations governing unfair acts in Crypto Asset or Crypto Asset Derivatives Transactions

The FIEA contains the following prohibitions against unfair acts (the conduct of which is punishable by penalties) in respect of Crypto Asset spot transactions and Crypto Asset Derivatives Transactions, regardless of the violating party:
(a) prohibition of wrongful acts;
(b) prohibition of dissemination of rumours, usage of fraudulent means, assault or intimidation; and
(c) prohibition of market manipulation.

These prohibitions are intended to enhance protection of users and to prevent unjust enrichment.

However, insider trading is not regulated under the FIEA at this moment in time, due to difficulties in formulating a clear concept of Crypto Asset issuers, as well as the general inherent difficulties associated with the identification of undisclosed material facts.

Taxation

The National Tax Agency of Japan has announced that profits realised from the trading of Crypto Assets constitute "miscellaneous income" (*zatsu-shotoku*). The tax rate for miscellaneous income is progressive, ranging from 5% to 45% on profits. In addition to this, 10% of such profits are payable to the local government as inhabitant tax.

Taxpayers are able to utilise losses from Crypto Asset trading to offset such profits.

No consumption tax is imposable on the sale or exchange of Crypto Assets. However, consumption tax will be levied on lending fees and interest on Crypto Assets.

Furthermore, inheritance tax will be imposed upon the estate of a deceased person in respect of Crypto Assets that were held by such person.

Further, it was stated in the Japanese government's "Ruling Party's Tax Reform Proposal", published in December 2022, that year-end corporate taxation in respect of Crypto Assets would not apply to Crypto Assets held by a corporation at the end of a fiscal year if such Crypto Assets (i) are subject to valuation gains or losses based on market valuation, and (ii) meet certain requirements, such as if they have been issued by that corporation and have been continuously held since their issuance. As a result, on June 20, 2023, the National Tax Administration issued a "Partial Revision of the Basic Notification on Corporate Tax, etc. (Notification on Interpretation of Laws and Regulations)", which officially excludes from the scope of market valuation Crypto Assets held by a corporation at the end of its fiscal year that are issued by that corporation itself and meet the following conditions:

(a) The Crypto Assets were issued by that corporation and have been continuously held since their issuance.
(b) The Crypto Assets have been continuously restricted from being transferred by any of the following means since the date of their issuance:
    (i) certain technical measures have been taken to ensure that the Crypto Assets cannot be transferred to another party; or
    (ii) the Crypto Assets have been held in a trust that meets certain requirements.

Money transmission laws and anti-money laundering requirements

Money transmission

Under Japanese law, only licensed banks or fund transfer business operators are permitted to engage in the business of money remittance transactions. Money remittance transactions means, according to Supreme Court precedent, "to undertake the task of transferring funds requested by customers utilising the systems of fund transfer without transporting cash between distant parties, and/or to carry out such task". Technically speaking, Crypto Asset does not fall under the definition of "fund". However, if the remittance transaction of a Crypto Asset includes the exchange of fiat currencies in substance, such transaction will likely be deemed a money remittance transaction. Further, issuance of stablecoins, which are pegged to fiat currency, would be deemed engagement in money remittance transactions.

Anti-money laundering requirements

Under the Act on Prevention of Transfer of Criminal Proceeds, CAESPs are obligated to: (i) verify identification data of the customer and a person who has substantial control over the customer's business for the purpose of conducting the transaction and occupation of business; (ii) prepare verification records and transaction records; (iii) maintain the records for seven years; and (iv) report suspicious transactions to the relevant authority, and so forth.

Travel Rule

When a CAESP or an EPIESP transfers Crypto Assets or EPIs to a customer of another CAESP (including any foreign CAESP and EPIESP) at the request of a customer, the CAESP or EPIESP must notify the receiving CAESP or EPIESP of the identification information, including the name and blockchain address, pertaining to the sender and the receiver (the "**Travel Rule**"). However, transfers to a CAESP or an EPIEPS in countries that do not yet have any Travel Rule legislation are not subject to the rule. In addition, when a CAESP or an EPIESP transfers Crypto Assets or EPIs to an unhosted wallet at the request of a customer, it is not subject to the Travel Rule. Nevertheless, even for transactions that are not subject to the Travel Rule, information on the counterparty (name, blockchain address, etc.) must be obtained and recorded.

Promotion and testing

On June 15, 2018, the Cabinet Office of Japan announced the "Basic policy for Regulatory Sandbox scheme in Japan". The Regulatory Sandbox is a scheme to introduce new, outstanding technologies, such as AI, IoT, big data and blockchain, in Japan, and encourages new ideas for "test projects" in any industrial sector, whether in or outside Japan.

By utilising this scheme and using sidechain and atomic swap technology, test projects were conducted to establish a platform that enables simultaneous delivery of Crypto Assets and settlement in fiat currency, eliminating credit risks to counterparties. This is part of the efforts to create a market for professional CAESPs to efficiently conduct covering transactions.

Ownership and licensing requirements

There is no restriction on an entity simply owning cryptocurrencies for its own investment purposes, or investing in cryptocurrencies for its own exchange purposes. As a general rule, the Crypto Asset regulations under the PSA will not be applicable unless an entity conducts CAES as a business. Please note, however, that the sale of certain types of tokens may be subject to regulation under the PSA or the FIEA, as applicable, as discussed in "**Sales regulation**" above.

Mining

The mining of cryptocurrencies is not regulated. Mining in itself does not fall under the definition of CAES. It should be noted, however, that if the mining scheme is formulated as involving CISIs and includes the sale of equity interests in an investment fund, it will be subject to the relevant FIEA regulations.

Border restrictions and declaration

Border restrictions

Under the Foreign Exchange and Foreign Trade Act of Japan, if a resident or non-resident has received a payment exceeding JPY30 million made from Japan to a foreign country or made from a foreign country to Japan, the resident or non-resident must report it to the Minister of Finance. If a resident has made a payment exceeding JPY30 million to a non-resident either in Japan or in a foreign country, the same reporting requirement applies.

On May 18, 2018, the Ministry of Japan announced that the receipt of payments in Crypto Assets or the making of payments in Crypto Assets, the market price of which exceeds JPY30 million as of the payment date, must be reported to the Minister of Finance.

Declaration

There is no obligation to declare cryptocurrency holdings when passing through Japanese Customs.

Reporting requirements

As explained above, a certain payment or receipt of payment exceeding JPY30 million, either by fiat currencies or Crypto Assets, is subject to a reporting obligation to the Minister of Finance under the Foreign Exchange and Foreign Trade Act.

A CAESP must report to the relevant authority if it detects a suspicious transaction.

Estate planning and testamentary succession

There has been no established law or court precedent with respect to the treatment of cryptocurrencies under Japanese succession law. Under the Civil Code of Japan, inheritance (i.e., succession of assets to heir(s)) occurs upon the death of the decedent. Theoretically, cryptocurrencies will be succeeded to by heir(s). However, given the anonymous nature of cryptocurrencies, the identification and collection of cryptocurrencies as inherited property would be a material issue unless the relevant private key or password is known to the heir(s). On the other hand, even if the private key or password is unknown, to the extent that the inherited property can be identified, theoretically, inheritance tax may be imposed. An enclosed and notarised testament may be one of the solutions for these issues. However, from the perspective of Japanese law, the legal framework must be improved so that these new issues can be adequately dealt with.

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Also in this year's edition are 13 Expert Analysis chapters, including in-depth guidance and analysis on cryptocurrency compliance, stablecoin regulation, digital asset sanctions, KYC/AML perspectives, cryptocurrency insolvencies, and taxation. Also covered in this year's edition are blockchain decentralisation, intellectual property, and NFTs, making this the definitive legal guide to the global blockchain and cryptocurrency industry in 2024.

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