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Stablecoins Regulations in Japan

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A. Introduction

The Financial Services Agency ("**FSA**") established a Working Group on Payment Services, and the report of this working group ("**Report**") was published on January 11, 2022. In response to the Report, amendments to the Payment Services Act ("**PSA**"),[1] the Act on Prevention of Transfer of Criminal Proceeds, Financial Instruments and Exchange Act ("**FIEA**"),[2] the Banking Act, and other statutes were enacted on June 3, 2022 (collectively, the "**Amendments**"). The Amendments will take effect within one year from the date of their promulgation on June 10, 2022.

The Amendments can be grouped as follows: (i) the regulations on stablecoins, (ii) the regulations on prepaid payment instruments, and (iii) joint transaction monitoring by banks. This article provides a brief introduction of the regulations on stablecoins.

B. Classification of Stablecoins

Stablecoins are widely distributed overseas as a method of payment for cryptoassets and other digital assets. In Japan, stablecoins that can be redeemed in currency fall under the category of assets denominated in currencies as stipulated in Article 2, Paragraph 6 of the current PSA. However, the current PSA does not have a legal framework to regulate stablecoins that are blockchain tokens.

Under the Amendments, stablecoins will be categorized as follows:

(i) digital money type stablecoins, which are issued at a price linked to the value of a legal currency and promised to be redeemed in the same amount as its issue price; and

(ii) crypto asset type stablecoins, which are stablecoins that are not digital money type stablecoins.

Digital money type stablecoins will be regulated as electronic payment instruments as stipulated in Article 2, Paragraph 5 of the amended PSA. On the other hand, crypto-asset type stablecoins will not fall under the category of electronic payment instruments and will be categorized as crypto assets under the PSA or as securities under the FIEA.

1. *Shikin kessai ni kansuru horitsu* [Payment Services Act], Act No. 59 of June 24, 2009.
2. *Kinyu shohin torihiki ho* [Financial Instruments and Exchange Act], Act No. 25 of 1948, as last amended by Act No. 95 of December 14, 2018.

C. Regulations on Electronic Payment Instruments

1. Issuers of Electronic Payment Instruments

Issuers of electronic payment instruments are limited to banks, funds transfer service providers, and trust companies.

2. Intermediaries of Electronic Payment Instruments

The amended PSA introduced a new registration system to regulate intermediaries of electronic payment instruments. Also, the electronic payment instruments business has been defined to include the following:

(i) purchase and sale of electronic payment instruments, or exchange thereof with other electronic payment instruments;
(ii) intermediary, brokerage or agency services in connection with item (i) above;
(iii) management of electronic payment instruments for another person; or
(iv) (a) transfer funds and reduce the claim amount regarding an exchange transaction equivalent to such funds, or (b) increase the claim amount regarding an exchange transaction equivalent to the funds received by using an electronic data processing system in commission and on behalf of the fund transfer service operator.

Additionally, electronic payment instruments business operators must comply with the following regulations:

(i) provide an information security management;
(ii) if the electronic payment instruments business operator consigns a part of the electronic payment instruments business to a third party, then it must implement the necessary measures to ensure the proper and reliable conduct of the business;
(iii) implement necessary measures to protect users and ensure the proper and reliable conduct of the electronic payment instruments business;
(iv) refrain from accepting deposits of money and other property from users, which is, in principle, prohibited;
(v) provide for the separate management of the electronic payment instruments of users from the electronic payment instruments business operator's own assets;
(vi) enter into a contract with the issuer of the electronic payment instrument, which must include provisions regarding the sharing of liability for compensation;
(vii) provide a financial services alternative dispute resolution mechanism;
(viii) comply with the measures under the Act on Prevention of Transfer of Criminal Proceeds; and
(ix) submit an annual report.

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A Commentary on the System of Calling for Third-Party Comments
(From the Perspective of a Drafter of the Bill)

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A. Introduction

I joined Oh-Ebashi LPC & Partners after serving as a Senior Specialist for Legislation at the Legislative Affairs Office of the Japan Patent Office ("**JPO**") for three years. One of my accomplishments during my time at the JPO was being involved in drafting the bill to amend the Patent Act of Japan (the "**Patent Act**"). The bill was enacted in 2021.

There was a previous Oh-Ebashi Newsletter article about the amendments to the Patent Act in 2021.[1] In this article, I would like to delve deeper and focus on the new system of calling for third-party comments (the "**System**"). I will describe the developments that have taken place after the amendments and provide some practical advice from the perspective of a drafter of the bill that established the System.

B. Structure of the System of Calling for Comments from Third Parties

1. Overview

The System allows courts to call for the submission of opinions from a wide range of third parties in patent infringement cases and other cases concerning the application of the Patent Act and any other necessary matters relating to the subject cases. Since there is no similar system available in civil litigation in Japan, the System is the first of its kind to be introduced for such purpose under Japanese legislation. Moreover, there is no qualification required for a party to submit a written opinion, thus, even a company located overseas can submit an opinion.

Initially, the option of introducing a system that is similar to the *amicus curiae* procedure in the United States was considered, but it was eventually concluded that it was impossible to simply imitate the *amicus curiae* system because the principles underlying the civil procedure system in Japan are different from those in the United States. Various efforts were made to put in place

1. Shinji Ishizu, *Latest Developments in the Japanese Patent Practice*, Oh-Ebashi LPC & Partners Newsletter, Winter Issue (2021), 6-9, available at https://www.ohebashi.com/jp/newsletter/NL_en_2021winter_R.pdf.

a system that would allow courts to broadly accept the submission of written opinions from the general public in the civil litigation system of Japan. Although the System is sometimes referred to as the "Japanese version of the *amicus curiae* system," it should be noted that the System is different from the *amicus curiae* system in the United States in many respects.

2. Tips in Submitting Written Opinions

One of the differences of the System from the *amicus curiae* system is that the System was designed as a procedure for the collection of evidence. The proceeding for calling for comments from third parties (the "**Proceeding**") will only be implemented if a plaintiff or defendant files a motion for it and the court decides to call for third-party comments. Thus, third parties are not allowed to submit a written opinion to the court if the Proceeding is not implemented, even if they desire to do so.

In addition, even if one submits a written opinion as a third party in a case where the Proceeding has been implemented, the court will still not read such written opinion at that stage. The court will only read the written opinion if either the plaintiff or defendant reads such written opinion that was submitted to the court, and then submits it to the court as evidence. If neither party submits the written opinion as evidence, then the court will prepare its decision without reading or referring to the written opinion.

In view of the foregoing, here are some tips when submitting a written opinion to the court. When third-party comments are sought on two sides of a dispute, there may be cases where one part of the written opinion will be favorable to the plaintiff while another part thereof will be favorable to the defendant. If such written opinion is submitted by a third party, then it is likely that neither the plaintiff nor defendant will submit such written opinion as evidence since neither party would be willing to submit a written opinion that contains a view that is not favorable to it. To avoid such situation, it is advisable for the third party to submit two separate written opinions, one for the plaintiff, and the other for the defendant. Thereafter, each party may then submit the written opinion that it is certain does not contain views that are unfavorable to it. The court may, however, limit the number of written opinions that may be submitted by a third party in each case, so the relevant guidelines of the court should be read and complied with.

3. Frequently Asked Questions and Answers Thereto

I will now address two frequently asked questions. The first question is whether it is possible to submit written opinions in English. There is no rule governing such matter in the relevant provisions of the Patent Act, so this is up to the relevant court to decide. Considering that the sample guidelines that permit the submission of written opinions in English are currently posted on the webpage of the Intellectual Property High Court,[2] the submission of written opinions in English may likely be permitted in some cases. If a third party submits a written opinion in English, then the plaintiff or defendant will have to translate it into Japanese and submit it with the translation to the relevant court as evidence.

Where the court has decided to call for comments, the second frequently asked question is whether it is possible for a third party to file a request for a copy of the records of the case. The Patent Act does not address this, but the Code of Civil Procedure of Japan does. The Code of Civil Procedure stipulates that, in principle, any person

2. https://www.ip.courts.go.jp/eng/Guidelines_for_Proceedings/vcmsFolder_1618/vcms_1618.html.
3. Code of Civil Procedure, art. 91.

may file a request to inspect a case record, but a request for a copy of the case record may only be filed by the parties to the case or a third party that makes a *prima facie* showing of legal interest in the case.[3] Moreover, when the Intellectual Property High Court calls for comments from third parties, in principle, the judgment of the original court will be disclosed on the website of the courts in Japan; therefore, one can refer to such judgment through the website (however, the judgment of the original court may not yet be disclosed at the time of the implementation of the Proceeding if necessary measures are being taken to protect trade secrets, etc.).

C. Further Amendment of the Patent Act

The Code of Civil Procedure of Japan was amended this year to introduce IT-based civil court proceedings. In coordination with the said amendment, the Patent Act was also amended, including Article 105-2-11 thereof, which provides for the System. The amended Patent Act will be enforced within four years commencing from the date of promulgation thereof (May 25, 2022). The specific date of enforcement has not yet been determined, but after its enforcement, it will become possible for third parties to submit written opinions through the Internet.

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