

# CY Japan Legal Update

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## Fintech / Virtual Currency

### **The Amendment to the Banking Law and other related laws relating to fintech and virtual currency will come into force within one year from June 3, 2016**

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The Law Partially Amending the Banking Law and Other Laws (“Amendment Law”) was enacted on May 25, 2016. The Amendment Law is a law amending the Banking Law and related laws including the Law concerning Financial Settlements and the Law on Prevention of Transfer of Criminal Proceeds to strengthen financial functions in keeping with changes in the environment for finance in recent years such as the rapid development of information communication technology and was promulgated on June 3, 2016 and will be enforced within one year from the promulgation date (enforcement date will be determined in future ordinance).

The measures provided for in the Amendment Law are wide ranging and this article will introduce the outline of (1) facilitation of investment in finance related IT enterprises and (2) the establishment of the system related to virtual currency exchange services.

#### (1) Facilitation of investment in finance related IT enterprises

The Amendment Law will ease on the restrictions on investment in finance related IT enterprises by banks and bank holding companies to make it possible for strengthening the alliances between financial institutions and finance related IT enterprises against the backdrop of the growth of fintech. Namely, prior to the amendment, if a bank or bank holding company intended to invest in a finance related IT enterprise, an investment exceeding 5% of the voting rights (15% in the case of investment from a bank holding company or its subsidiary) could not be made if the target enterprise was not conducting business of a category listed in the laws as a “company eligible to be a subsidiary company”, however, the Amendment Law permits exceptions to such restriction subject to the permission of the Financial Services Agency. There is the necessity to incorporate a subsidiary in Japan in the case of a foreign IT related enterprise intending to receive investment from a Japanese financial group as there is no particular deregulation with the current amendment in regard to the investment in foreign finance related IT enterprises.

(2) Establishment of the system related to virtual currency exchange services

Against the background of countries being required to impose regulations for prevention of money laundering and the financing of terrorism on business operators exchanging virtual currency and fiat currency in the Leader's Declaration of G7 Elmau Summit in June 2015 and the Guidance for a Risk-Based Approach to Virtual Currencies published in June 2015 by FATF, the Amendment Law provides for obligations imposed on VC exchange service providers and supervisory authority of regulators along with the registration system for virtual currency exchange business.

Under the Amendment Law, "virtual currency exchange services" is defined as (i) exchange of virtual currency with fiat currency or other virtual currency, (ii) brokering, intermediation or agency for such exchange and (iii) management of monetary or virtual currency for the user for the above (i) and (ii). Moreover, under the Amendment Law, virtual currency exchange services may not be conducted without registering with the Prime Minister. If a foreign company intends to register, it is necessary to have a business office in Japan and have a representative residing in Japan. As well, a certain financial base in Japan is required (in future, it will be provided for in a cabinet office ordinance, however, the methods such as minimum capital and deposit are possible).

An obligation to identify customers at the time of account opening and an asset segregation obligation for user assets and VC exchange service provider's assets are imposed on the VC exchange service provider. The Financial Services Agency may exercise supervisory powers including on-site inspection and business improvement order against the virtual currency exchange service provider. In the case of a foreign business operator engaging in virtual currency exchange services in Japan after registration, the same obligations also are imposed and it will be subject to supervisory powers of the Financial Services Agency.

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