

資 料
〔講 演〕

Considering some types of money : Japanese bill payment services

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Introduction

According to the HM Treasury Report on June 2008¹, the UK recently undertook an analysis of the business models of bill payment service providers to determine how they might be affected by implementation of the Payment Services Directive (PSD) and concluded that some bill payment service providers (ex. PayPoint) are not to be considered as providing money remittance services nor providing any other payment service within the meaning of the PSD, and falls in the negative scope of the PSD article 3 (b). In these cases, unlike other European services such as GWK Travelex, the provider acts as agent of the payee for the purpose of receiving payer monies, such that payment by the payer to the firm (or its agent) constitutes payment to the payee without any further execution on the part of the bill payment service provider.

In Japan, the bill payment services (“walk-in bill payment service” and “COD service”) similar to the UK PayPoint also have been operated under no particular regulation for more than 20 years. To understand the Japanese situation may contribute to the above EU discussions. Therefore this paper introduces the current move in Japanese regulations of bill payment service providers.

1 See section 3.10 at HM Treasury, Implementation of the Payment System Services Directive: a summary of consultation responses, June 2008, available on the HM Treasury web.

1. New types of money and regulations

Not only bank transfers but also credit card transactions (at the end of 2006 in Japan, 34.8 trillion yen for shopping and 7.5 trillion yen for cashing), electronic money and point programs are used as settlement methods in commercial transactions. In Japan, while the supply of currency continues to hover at around 4.5 trillion yen, the supply of electronic money is rapidly expanding. The volume of electronic money is expected to be about 1.4 trillion yen in 2008, and to continue expanding. In addition, the value of points issued in point programs in 2008 is around 700 billion yen and is steadily expanding. For now, credit cards are regulated by the Installment Law, and card-based electronic money—including Edy with 37.8 million cards in use, and SUICA with 20.54 million cards in use as of April 2008—is regulated by the Act on Regulation, etc. on Advanced Payment Certificate (the so-called Prepaid Card Law). But network-based electronic money, including Webmoney with about 578,000 people registered as of March 2008, is not currently regulated by any law, and regulation is being considered. Regarding point programs, following the international financial standards determined by the International Financial Reporting Interpretations Committee (IFRIC) of the International Accounting Standards Committee (IASC), it will have to be recorded not as ‘cost’ but as ‘debt’ in financial statements.

As some minimal regulation of the above settlement services is necessary for consumer protection, the Financial Services Agency is studying comprehensive regulation of such services through enacting a settlement services bill. However, as the industry is now in the first phase of development, excessive regulation may cause a so-called ‘recession at the initiative of government agencies’ and would be undesirable when considering possible expansion of such settlement services in Asian countries. So, business groups strongly disapprove of enacting a highly regulatory bill similar to the Electronic

2 It is determined in the Electronic Money Directive in the EU that only credit institutions can issue electronic money. Such credit institutions are stipulated to meet requirements including capital requirement, current net asset requirement, limitation of investment choices, and prohibition of operating other business. In addition, such institutions must be authorized and are obliged to repay at the par value. However, the Payment

Money Directive in the EU², and they are seeking a way prevent costly regulations by imposing self-restraint. On the other hand, settlement services are rapidly becoming widespread not only in Japan, but in the world. Among them, some services such as PayPal have already been internationalized and can be used as a method of money laundering. If consumer protection in settlement services does not fully work, it may decrease trust in the financial system. Accordingly, it is an important theme and we cannot evade it as an aspect of international law.

In Japan, there is also 'new money' which is not mentioned above. This is walk-in bill payment services performed by convenience stores and COD (cash on delivery) service operated by freight forwarding companies. These two services are not subject to regulation in spite of the large transaction volume. The transaction volume of this service provided by the four major convenience stores totaled 6.3 trillion yen in 2007, which is well over the money supply and has a stronger systemic impact than electronic money and point programs. As a consequence, how to control such services is controversial in Japan.

Behind the trend is the fact that the border between the area covered by exchange business and that covered by walk-in bill payment service is vague. In Japan, different from the U.K. and the U.S., no 'money flow between remote parties (exchange business)' may be conducted by business entities other than banks. That is to say, it is a typical bank business (Section 2, Paragraph 2, Article 2 of the Banking Act). Any business entity other than a bank that operates an exchange business would have a criminal penalty imposed on it. As a result, many settlement services in Japan are in a grey area from the

Services Directive was enacted because the Electronic Money Directive was too strict. It aims to standardize the regulations regarding payment services including currency trading among the member nations, and stipulates that all the member nations should prepare a domestic law by November 2009. It is determined in the regulation that an authorization system be implemented for payment service providers other than credit institutions, including a capital requirement, current net asset requirement, and measure of capital requirement. It also determines the following cases as regulated acts for both credit institutions and electronic money institutions: information disclosure to consumers, burden sharing among persons concerned, unlimited transactions, not to fulfill payment transaction or defective execution of payment transaction, and cancellation of payment orders.

legal point of view. Although it is actually not done, if PayPal, a money transmitter established under some state laws in the U.S., transferred money to Japan, that could be an illegal activity.

Meanwhile, walk-in bill payment service is separately determined in Section 9, Paragraph 2, Article 10 of the Banking Act as an auxiliary business that allows companies other than banks to engage in this service. Walk-in bill payment service and COD service are included in the above category, which is not regarded as exclusive business of banks, and is treated in that manner. This year, nevertheless, the Financial Services Agency started to consider newly establishing a settlement service law in order to examine a way to regulate walk-in bill payment service and COD service, from the standpoint that such services may fall into the category of an exchange business and could be illegal. Business groups are concerned about excessive regulation.

So, in this paper, I would like to (1) explain the circumstances surrounding walk-in bill payment service and COD service, then (2) explain the problematic areas from the viewpoint of Japanese law, and (3) discuss a desirable direction for regulation.

2. Circumstances in Japan surrounding walk-in bill payment service

Let me explain the circumstances in Japan of walk-in bill payment service and COD service.

(1) Walk-in bill payment service

As 'new money' unique to Japan, walk-in bill payment service is included in the services provided by convenience stores (CVS). More than twenty years have passed since this service was first started in 1987 at Seven-Eleven for receipt of electric power charges of Tokyo Electric Power Company. It is a deep-rooted service now and has recently been expanded as a means of settling bills for Internet shopping. The average amount of a receipt is around 10,000 yen and the service is mainly used as a means of small payment. Business entities operating walk-in bill payment service are banks, convenience stores, factoring companies, credit loan companies, credit-card companies, computer system-related companies and real-estate companies.

There exists no special law that controls walk-in bill payment service as

a civil affair. Apportionment of responsibilities among the parties involved in the cases including dissolution of creditor and debtor relationship, or the case that a transaction was unconcluded for some reason or other is basically determined by the contract between the parties involved. If the money is accepted at a convenience store, the procedure of accepting money including the form of payment is standardized by the convenience store industry's self-regulation. It is actually recognized that the payment is completed at the time money is accepted at the convenience stores and a stamp of acceptance is put on a statement of payment. Additionally, the walk-in bill payment service providers, including convenience stores, refuse repayment of once accepted money. The reason is as follows: walk-in bill payment service providers cannot have a true figure of the contract including the case of nullity or cancellation, so walk-in bill payment service providers remit money to receiving companies based on the contract between them, then repayment will be conducted by receiving companies. Walk-in bill payment service providers and convenience stores conduct appropriate credit management by carrying out credit research on directly contracted receiving companies. In case of nonbank financing companies, the items of credit investigation are the same as for examination of member stores of credit-card companies.

Next, let me explain the time required for money remittance from convenience stores to receiving companies. The time taken for money remittance from convenience stores to walk-in bill payment service providers (or to directly contracted receiving companies) is approximately one week to ten days. On the other hand, money remittance from walk-in bill payment service providers to receiving companies is ordinarily performed one to six times a month. Frequency of money-transfer tends to become shorter when the amount or the number of money-transfers increases. Apportionment of responsibilities in case a convenience store or walk-in bill payment service provider falls into bankruptcy during money-transfer is as follows: receiving companies assume risks of bankruptcy of convenience store franchisees, and franchisors assume risks of bankruptcy of their member stores.

(2) COD service

COD service is now provided by the major freight carriers and their subsidiary financing companies. The amount of money accepted for one

delivery is around 10,000 yen. These services are widely used as a settlement means for small sums. Their parent companies, freight carriers, are ultimately responsible for the payment to receiving companies. The following are features of COD services: the freight contract is the basic contract, continuous and repetitive service is used by receiving companies, and most of the receiving companies are mail-order companies. That is to say, consigners of the money transfers are customers with repetitive business transactions. So, the management of receiving companies by the freight carriers and their subsidiary financing companies works quite effectively and it is inferred that this is the reason for fewer consumer troubles.

In case of cash payment, there are generally no stipulations regarding time of reimbursement, but in practice, the time when the delivery person accepted money from the consumer is considered to be the time of reimbursement. In case of invalidity of a contract, repayment to the consumer is basically performed by receiving companies, and freight carriers don't respond to requests for repayment. Freight carriers and their subsidiary financing companies conduct credit checks of receiving companies (cargo owner companies) at the time of application for COD service.

In COD service, money transfer from freight carriers to receiving companies is basically conducted once or twice a week. Accordingly, the capital turnover period is relatively short, so demand for capital conservation of receiving companies is not high. Freight carriers are ultimately responsible for reimbursement to receiving companies. Freight carriers assume risks of bankruptcy of consignees including trucking companies.

3. Legal Study

(1) Main idea of regulations on exchange business

Regulations on exchange business differ from country to country. For example, in the U.S., exchange business is not considered as an exclusive business service of banks. Concerning money-transfer conducted by business entities other than banks, there is no federal regulation except regarding regulation against money laundering. Some states have introduced state-level regulation and others have not. In state-level regulation, authorization, regulation on management soundness and duty to secure stable capital are stipulat-

ed. When laws concerning money-transmitting business are stipulated, issuing electronic money is often subjected to regulation. Meanwhile, in Europe, business transactions included in the exchange business differ from country to country. In the U.K., there is no regulation on exchange business because it doesn't fall into the category of an exclusive business of banks. In Germany, while money-transfer between accounts (girosystem or giroverkehr) is considered to be banking business, money flow business (finanztransfergeschäft) is not included in the banking business. That enables business entities other than banks to operate money flow business. However, in France, exchange business (provision and management of payment means) is regarded as an exclusive business of banks and business entities other than banks are not allowed to operate an exchange business.

In Japan, only banks are allowed to operate an exchange business. The aim of this regulation is that when providing exchange business services to the customers, it is obvious that a credit relationship between banks and customers is established. A bank without enough credit should not be allowed to perform such an important economic function as a fund agency for remote parties, because such a bank cannot fully protect the users of the exchange transaction service. This is the main reason that in the Banking Act independent operation of an exchange transaction business is limited to banks. (p. 142, 'Commentary of the New Banking Act' edited by Ministry of Finance, Banking Bureau, Financial Law Study Group, published by Okura Zaimu Kyokai, 1983). As a result, the definition of 'exchange transaction' should essentially be limited to the range necessary for consumer protection. However, according to a Supreme Court precedent of 2001, its definition came to cover a broad range.

Exchange transaction means accepting and performing orders to transfer funds by utilizing a system in which money is transferred of between parties without transporting actual cash. (p. 97, No. 2, Vol. 55 of keishu (the Supreme Court Rules on criminal cases), March 12, 2001). This judgment was handed down in a case in which an underground bank was involved. The details of the case are as follows: person A who lives in Japan accepted Japanese yen via a money-transfer order from person B living in Japan to remit money to the recipient, person C who lives in South Korea. Person A informed Person B's name and Person C's bank account number to person D living in South Korea,

so person D transferred money in won from person A's bank account in South Korea to person C's bank account. In this case, the judgment was handed down not based on consumer protection, which is the basis of the Banking Act, but based on preventing illegal money-transfer by underground banks. Accordingly, it is influential from the legislative aspect that such cases should be dealt with by the domestic law against money laundering (law to prevent transfer of profits gained by criminal acts), and not by the Banking Act ³. However, as a result of the Supreme Court determining the meaning of exchange transaction in quite a broad sense, a possibility arose that various settlement services could be included as exchange transactions. Such awareness was raised in a memorandum taken by Professor Iwahara, the chairman of the settlement working group of the Financial Services Agency and it was proposed in March 2008 that such services should be exclusively regulated by enacting a new law regarding settlement services.

- (2) Whether or not walk-in bill payment services correspond, COD services do correspond to the definition of an exchange transaction

Then, do walk-in bill payment service and COD service correspond to the definition of exchange transaction? In my opinion, the legal characteristic of walk-in bill payment service and COD service is acceptance by an agent. So, I think that walk-in bill payment service and COD service do not correspond to the definition of an exchange transaction.

First, regarding walk-in bill payment service and COD service conducted by convenience stores and freight carriers, they are transactions in which convenience stores and freight carriers accept money as a proxy of designated companies. In such transactions, settlement is completed and consumers' debt vanishes when the proxy accepts the money. Therefore, such a transaction is

3 However, while FATF admonishment includes electronic money and money-transfer, money-transfer and receipt of money by proxy are not covered by the Act on Prevention of Transfer of Criminal Proceeds in Japan. As the proxy receives a commission of bill collection from the general public, there is a high possibility that such money is used for unlawful purposes including money laundering. Accordingly, if regulation on exchange transaction stipulated in the Banking Act will not cover electronic money and electronic money transfer in the relationship with the law for Prevention of Transfer of Criminal Proceeds, another regulation should be developed.

not considered to be a transaction for the purpose of money-transfer between the parties. Considering the aim of the law, there is no risk for consumers to pay doubly because the consumers' debt vanishes at the time of payment. Accordingly, no problem will arise from the standpoint of consumer protection.

Secondly, walk-in bill payment service and COD service are considered to be 'money acceptance by proxy' and walk-in bill payment service is, as mentioned before, stipulated as a supplementary business of banks (the Banking Act), so it is not considered to be the exclusive business of banks. If not, the Banking Act itself contains inconsistent ideas. Actually, walk-in bill payment service has been conducted by trading companies, convenience stores, freight carriers and other businesses for scores of years and is commonly not regarded as banking business. Even in a no-action letter issued by the Financial Services Agency on 9 July 2004, in the case of electronic money, it can be found as an answer that it is not considered to be an exchange business stipulated in the Banking Act as brokering money-transfer because such companies are consigned acceptance of payment (bill collection) from the member stores. This answer is based on the idea that consignment of bill collection does not correspond to the definition of an exchange transaction.

4. Desirable course of action of regulation

When considering a desirable way of regulating settlement services, both of (1) consumer protection and protection of users of settlement services, and (2) protection and industrial development of settlement service must be considered. The background of rapid growth of settlement services performed not by banks is, regarding settlement of small sums, not only the traditional money-transfer method through banks, but settlement service which is closely connected with commercial transactions to meet the demands of consumers. There is a possibility that electronic money will become more global. Then, if domestic settlement service is suppressed with excessive regulation, it is very possible that the country will fall behind in international industrial competitiveness. Consequently, consumer protection which will not lead to excessive regulation should be fully considered.

In that respect, if the Financial Services Agency formulates a law on

settlement service, regulation should be looser than that in the Banking Act. Excessive market entry regulation like the Electronic Money Directive of the EU is undesirable. It seems that the Financial Service Agency is considering imposing uniform deposit money based on regulations stipulated in the Pre-paid Card law. However, to demand deposit as dead money in settlement service which has only a small margin or profit causes great concern in fostering industries.

Thus, open access to the market, not throwing away dead money and ex-post remedy are the necessary measures in order to reconcile both consumer protection and fostering industry. For this reason, I believe it is much more rational for the industry group to develop a model contract between the industry and consumers and work for consumer protection following the model contract. Namely, regarding walk-in bill payment service and COD service, the industry group voluntarily specifies such requirements in general contract conditions that acceptance of money from consumers is conducted by proxy of consigner for preventing duplicate payments and consumer's debt is extinct at the time of payment, then, the industry group grants a trustmark to the companies that comply with requirements.

How banks and others business entities get engaged in the new money continues to be an important issue. Not only to demand tightening of regulations but also establishing economically rational regulations are of utmost importance.

According to the newspapers in December 2008, after a long debate, the Japanese Financial Services Agency finally gave up of making new regulatory law concerning the bill payment services because of the strong oppositions by such service providers. The agency will only introduce new regulation for the E-money managed by computer servers (ex. Webmoney) and point exchange service providers (ex. G-point).

End

本講演は、2008年10月にボン大学とソウル大学に於て行ったものであり、科学研究費特定領域研究計画研究（「金融監督規制の国際調和と相互承認の研究」課題番号16090101、平成16～21年度）に基づく研究成果の一部である。