



The Legal 500

Country Comparative Guides

Japan

FINTECH

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This country-specific Q&A provides an overview of fintech laws and regulations applicable in Japan.

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JAPAN FINTECH



1. What are the sources of payments law in your jurisdiction?

There are many payment methods and instruments in Japan, but no omnibus payment law. The general payment rule applicable to rights and obligations is governed by the Civil Code (Act No. 89 of 1896, as amended). The rules for issuance and control of cash are subject to the Act on Unit of Currency and Issuance of Cash (Act No. 42 of 1987, as amended). In addition to these general rules, certain payment methods/instruments are regulated as follows:

1.1. Prepaid Payment Instruments (“PPIs”), which are instruments that record a certain value charged in advance of use and are then debited as payment in consideration for goods and/or services received, are regulated under the Payment Services Act (Act No. 59 of 2009, as amended; the “PSA”).

1.2 Installed Payment Installed Payments, in connection with the payment of consideration for goods or services received to be paid out over 2 months or longer, are regulated under the Instalment Sales Act (Act No. 159 of 1961, as amended). The Instalment Sales Act substantially covers all credit card payments.

1.3 Remittance. Traditionally, remittance has been regulated by the Banking Act (Act No. 59 of 1981, as amended; the “Banking Act”) and other specific laws applicable to financial institutions. Only banks and other financial institutions were allowed to conduct remittance businesses. However, since the introduction of the PSA in 2009, certain registered companies, other than banks and financial institutions, have been permitted to handle remittance of amounts up to JPY 1 million. Furthermore, the revised PSA, which came into effect on May 1, 2021, introduces three new categories of remittance services based on the amount of remittance handled per transaction. The three categories of remittance services are (i) transactions involving remittance of over JPY 1 million (Type 1); (ii) transactions involving remittance of up to JPY 1 million (Type 2); and (iii) transactions involving remittance of up to JPY 50,000 (Type 3). Under

this system, the stringency of regulations applicable to fund remittance service providers conducting business in Japan will depend on the type of remittance services they wish to provide and the risks involved in their business. For example, those proposing to provide Type 1 fund remittance services will be subject to stricter regulations and prior regulatory approval.

1.4 Others. There are some other traditional payment methods, each subject to specific legislation. For example, promissory notes are subject to the Negotiable Instrument Act (Act No.20 of 1932, as amended) and checks are subject to the Check Act (Act No. 57 of 1933, as amended), though the issuers of such payment methods are not required to be licensed or registered; the Electronically Recorded Monetary Claims Act (Act No. 102 of 2007, as amended) provides a legal framework for the electronic recording of monetary claims.

2. Can payment services be provided by non-banks, and if so, on what conditions?

As for PPIs, the issuer must register its PPI business and the characteristics of the PPI at the competent Local Finance Bureau. The application for registration will be rejected if any of the disqualification conditions provided under the Payment Services Act exists, such as where the issuer fails to maintain compliance systems and fails to monitor and control the stores where such PPIs are to be used. Credit providers for installed payments are required to file for registration with the head of the competent local bureau of the Ministry of Economy, Trade and Industry (“METI”). Disqualification conditions, such as insufficient net assets (e.g. an intermediary of comprehensive credit purchase must maintain net assets equal to 90% or more of its capital amount) depend on the types of goods and/or services the relevant instalment payment is made for. Similar to the PPI regulation, there are also certain compliance requirements.

3. What are the most popular payment

methods and payment instruments in your jurisdiction?

The most popular payment method is unquestionably cash. According to “Cashless Roadmap 2023”, a cashless payment-related report issued by the Payments Japan Association in August 2023, the percentage of cashless settlements in Japan was 32.5% in 2021 and 36.0% in 2022 (which is on the rise but still very low compared to South Korea (95.3% in 2021) or the United States (53.2% in 2021)). After cash, the most popular payment methods are credit cards, direct debit and prepaid instruments.

4. What is the status of open banking in your jurisdiction (i.e. access to banks’ transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so, to which entities, and what is state of implementation in practice?

The Banking Act regulates Electronic Payment Intermediate Service Providers and facilitates open banking. The Banking Act requires entities that provide Electronic Payment Intermediate Services to register with the Financial Services Agency of Japan (the “FSA”). Electronic Payment Intermediate Service Providers are defined broadly enough to include intermediaries between financial institutions and customers, such as entities using IT to communicate payment instructions to banks based on entrustments from customers or entities using IT to provide customers with information about their accounts with banks. Entities providing financial account aggregation services are also categorised as Electronic Payment Intermediate Service Providers. Financial institutions must adopt and make public their standards for determining whether to enter into contracts with specific Electronic Payment Intermediate Service Providers. Financial Institutions must treat Electronic Payment Intermediate Service Providers that meet such standards in a fair and non-discriminatory manner. Financial institutions intending to enter into contracts with Electronic Payment Intermediate Service Providers are required to make efforts to develop an open API system.

5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?

The Act on the Protection of Personal Information (the

“APPI”) is a principle-based regime for the processing and protection of personal data in Japan. The APPI generally follows the eight basic principles of the OECD Guidelines on the Protection of Privacy and Transborder Flow of Personal Data. The APPI is applicable to all private businesses, including Fintech businesses. Based on the requirements of the APPI, each governmental ministry has issued administrative guidelines applicable to the specific industries under its purview. Fintech businesses must comply with the “Guidelines on Personal Information Protection” that are relevant to the financial services industry.

6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?

In order to encourage fintech innovation, the FSA introduced the “Fintech Testing Hub” in September, 2017. Under this initiative, the FSA sets up, on a case-by-case basis, a support team that helps Fintech companies and financial institutions identify and solve potential legal issues and risks associated with new Fintech schemes. In June 2018, the headquarters of Japan’s Economic Revitalization of the Cabinet Secretariat opened a cross governmental one-stop desk for the Regulatory Sandbox Scheme in Japan. The resource, available to Japanese as well as foreign companies, enables applicants (once approved) to carry out, under certain conditions, a demonstration of their projects, even if such activities are not yet covered under current laws and regulations. Blockchain technology, together with AI, IoT and big data, are explicitly mentioned in the Japanese government’s basic policy as prospective and suitable areas where innovation is encouraged.

7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?

No.

8. What tax incentives exist in your jurisdiction to encourage fintech investment?

Currently no specific tax incentives accelerating fintech investment are available in Japan. However, an individual angel investor can enjoy special treatment if he/she invests in new shares of a company that has

been in existence for less than 5 years and if certain requirements in relation to its size, growth rate, cash flow deficit and/or amount of research and development ("R&D") expenses are satisfied. In addition, investments in certain venture companies that advance open innovation will qualify for tax incentives if such investments are certified by the Minister of Economy, Trade and Industry. Further, tax credits are available for R&D expenses, provided that the relevant company satisfies certain requirements determined based on its size.

9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?

It depends on the relevant projects/companies and no typical pattern exists. Generally speaking, it is rare for foreign investors to make early-stage investments in Fintech companies in Japan since domestic investors have a strong interest in the industry. Due to language reasons, Japanese Fintech companies tend to rely more on domestic investors than on foreign investors at the initial stages of their development.

10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?

Japan is the third largest economy in the world. It is also one of the leading countries in innovation and technology.

It is also noteworthy that several local governments in Japan, including the local governments of Tokyo, Osaka and Fukuoka, are providing various kinds of support and incentives to encourage overseas start-ups to enter the Japanese market.

For instance, the Tokyo Metropolitan Government (the "TMG") released a paper entitled "Global Financial City: Tokyo" Vision – Toward the Tokyo Financial Big Bang in 2017. The paper outlines various measures for the nurturing of domestic players and attraction of foreign players in the entire financial sector. The TMG has opened the "Business Development Center Tokyo," which offers foreign entrepreneurs who are considering the expansion of their businesses in Tokyo an all-rounded support package covering all aspects of business and lifestyle issues. For foreign companies planning expansion into the Special Zone to establish their Asian Headquarters in particular, the Business Development Center Tokyo provides both business exchange support and specialized consulting services.

Additionally, Osaka Prefecture and Osaka City initiated a "Global Financial City Osaka" program in 2020, aiming to establish Osaka as a global financial city that attracts investment from all over the world to Osaka to drive the growth of Japan by creating business opportunities. As an international financial center, Osaka is envisioned as having unique characteristics and functions that differ from what Tokyo has to offer.

Furthermore, it was stipulated in a paper entitled "Grand Design and Action Plan for a New Form of Capitalism 2023 (Revised Version)", approved by the Cabinet in June 2023, that the Japanese government will foster the development of an environment for the promotion of web3, including the use of NFTs and decentralised autonomous organisations (DAOs) based on blockchain technology. In response, the Liberal Democratic Party of Japan (the "LDP"), the ruling party in Japan, has established the web3 Project Team of the LDP's Headquarters for the Promotion of Digital Society and published the "web3 White Paper" in 2023, which includes a study of the relevant legal framework and revisions required to be made to applicable laws and regulations for the promotion of web3.

11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

The TMG has initiated a program to increase the number of foreign entrepreneurs in Japan. Before this initiative, foreigners wishing to establish businesses in Japan had to obtain "business manager" visas. To do this, the applicant had to open an office in Japan as well as employ at least two full-time staff members, or invest at least JPY5 million in Japan. This was considered a high hurdle to surmount. Pursuant to the TMG program, applicants can receive residency status as business managers for half a year even if the conditions mentioned above are not met, provided that their business plans and other necessary information are filed with the TMG, and the TMG is satisfied that the applicants will likely meet the conditions within the following six months. To facilitate the process, the Tokyo Business Development Center also provides individual support under the program to help foreign entrepreneurs fulfill the visa conditions by the end of the six-month period and renew their residency status.

12. If there are gaps in access to talent, are regulators looking to fill these and, if so, how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

To encourage highly-skilled foreign professionals to work in Japan, the Immigration Bureau of Japan introduced the "Points-based System for Highly Skilled Foreign Professionals" in 2012. Under this system, a highly-skilled foreign professional can earn points depending on his/her academic background, work experience, annual income, age and other factors. If such points reach the prescribed threshold, a highly-skilled foreign professional may be entitled to preferential treatment, including (i) permission for multiple activities during his/her stay in Japan, (ii) being granted a five-year stay visa, (iii) relaxation of requirements for procurement of a permanent residence permit, (iv) permission for his/her spouse to work in Japan and, (v) subject to certain conditions being met, permission for bringing his/her parents and domestic helper to Japan.

In addition, in April 2023, the Special Highly Sophisticated Human Resources System (J-Skip) was introduced. Under the J-Skip, "highly skilled professional" status will be granted to those with academic or professional background and annual income above a certain level. Moreover, such "highly skilled professional" will also enjoy the benefits conferred under the existing "Points-based System for Highly Skilled Foreign Professionals", besides being granted more preferential treatment than under the current system.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

There is no Intellectual property regulatory framework that applies specifically to fintech businesses. Fintech businesses, like other businesses, will be protected under the Patent Act, the Trademark Act, the Copyright Act, the Design Act and the Unfair Competition Prevention Act.

14. How are cryptocurrencies treated under the regulatory framework in your jurisdiction?

14.1 Definition of Crypto Asset

The Payment Services Act ("PSA") defines "Crypto Asset" and requires a person who provides Crypto Asset Exchange Services to be registered with the FSA. The

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

- 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 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, Currency Denominated Assets and Electronic Payment Instruments; the same applies in the following item) and that may be transferred using an electronic data processing system; or
- 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.

"Currency Denominated Assets" means any assets that are denominated in Japanese or other foreign currency. Such assets do not fall within the definition of Crypto Asset. For example, prepaid e-money cards are usually considered Currency Denominated Assets.

14.2 Definition of Crypto Asset Exchange Services

The term "Crypto Asset Exchange Services" means any of the following acts carried out as a business:

- sale and purchase of Crypto Assets or exchange of Crypto Assets for other Crypto Assets;
- intermediation, brokerage or delegation of the acts listed in (i) above;
- management of users' money in connection with the acts listed in (i) or (ii) above; or
- management of users' Crypto Assets for the benefit of another person ("Crypto Asset Custody Service").

A person registered with the FSA to engage in Crypto Asset Exchange Services is called a Crypto Asset Exchange Service Provider. It should be noted that the management of Crypto Assets for the benefit of another person constitutes a Crypto Asset Exchange Service under the PSA, "unless otherwise specifically stipulated under any other law, in cases where the relevant management activity is performed in the course of a business". As a result, a Crypto Asset Custody Service would also constitute a Crypto Asset Exchange Service, even if the Crypto Asset Custody Service does not involve any of the acts listed in items (i) and (ii) above.

14.3 Introduction of regulations governing unfair acts in crypto asset or Crypto Asset Derivative Transactions

The Financial Instruments and Exchange Act ("FIEA") regulates crypto asset derivatives transactions ("Crypto Asset Derivatives Transactions") for purposes of user protection and ensuring that such transactions are appropriately conducted. 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 has introduced to the definition of "Financial Instruments" (i) "Crypto Assets" and (ii) "standardized instruments created by a Financial Instruments Exchange for purposes of facilitating Market Transactions of Derivatives through the standardization of interest rates, maturity periods and/or other conditions of (Crypto Assets)". Further, the FIEA has incorporated the prices, interest rates, etc. of crypto assets into the definition of "Financial Indicators". Since Crypto Assets will be included in the definition of Financial Instruments, the conduct of Over-the-Counter Derivatives Transactions related to crypto assets or related intermediary (baikai) or brokerage (toritsugi) activities will constitute Type I Financial Instruments Business. Accordingly, business operators engaging in these transactions have to undergo registration as Financial Instruments Business Operators in the same way as business operators engaging in foreign exchange margin trading.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

Tokens issued by way of initial coin offerings ("ICOs") take many forms, and the Japanese regulations applicable to each token vary depending on the ICO scheme involved.

15.1 Securities-type Tokens

The FIEA introduced the concept of ETRs, which has served to clarify the scope of tokens governed by the FIEA. The concept of ETRs relates to the rights set forth in Article 2, Paragraph 2 of the FIEA that are represented by proprietary value transferrable 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:

- investors (i.e., rights holders) invest or contribute cash or other assets to a business;
- the cash or other assets contributed by investors are invested in the business; and
- investors have the right to receive dividends of profits or assets generated from investments in the business.

Tokens issued under STOs would constitute ETRs if the three requirements above are satisfied. To put it simply, 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 ETRs, issuers of ETRs 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 ETRs or who sells ETRs 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 ETRs are expected to constitute Paragraph 1 Securities, registration as a Type I Financial Instruments Business Operator will be required for the purposes of selling, purchasing or handling the public offering of ETRs in the course of a business. Additionally, any ETR issuer who solicits acquisition of such ETR (i.e., undertaking an STO) will be required to undergo registration as a Type II Financial Instruments Business Operator, unless such issuer qualifies as a specially permitted business for qualified institutional investor.

15.2 Prepaid Card-type Tokens

Tokens that are similar to prepaid cards, in the sense of being usable as consideration for goods or services provided by token issuers, may be regarded as "Prepaid Payment Instruments", and accordingly, subject to applicable regulations under the PSA. It is noteworthy that a token subject to "Prepaid Payment Instruments" regulations under the PSA would not simultaneously be subject to PSA regulations applicable to "Crypto Asset", and vice versa.

15.3 Crypto Asset-type Tokens

A token that falls within the definition of Crypto Asset will be subject to Crypto Asset related regulations under the PSA. A token that is subject to the PSA must be sold by or through a Crypto Asset Exchange Service Provider. Based on prevailing views and current practices, a token that is issued via an ICO and is already in circulation on a Japanese or foreign cryptocurrency exchange would be deemed a Crypto Asset under the PSA, as a market of

exchange for such token would already be in existence. It is worth noting that due to a lack of exchange restrictions, tokens of this kind that are not yet in circulation would likely also be considered Crypto Assets under the PSA if they are readily exchangeable for Japanese or foreign fiat currencies or cryptocurrencies. IN this regard, the Japan Virtual and Crypto assets Exchange Association ("JVCEA"), a self regulatory organization established under the PSA, published its self-regulatory rules and guidelines regarding ICOs for Crypto Asset-type tokens entitled "Rules for Selling New Crypto Asset" ("ICO Rules"). According to the ICO Rules, there are two types of ICOs. The first is where a Crypto Asset Exchange Service Provider issues new tokens and sells such tokens by itself. The second is where a token issuer delegates the sale of newly issued tokens to Crypto Asset Exchange Service Providers. As a general matter, the ICO Rules stipulates the following requirements for each type of ICO:

- maintenance of a structure for the review of a business that raises funds via an ICO;
- disclosure of information on the token, the token issuer's purpose for the funds, and the like;
- segregated management of funds (both fiat and crypto assets) raised by an ICO;
- maintenance of proper accounting practices and records and financial disclosure of funds raised by an ICO;
- ensuring the security of newly issued tokens, and of the blockchain, smart contracts, wallet tools, and the like in respect of such tokens; and
- proper valuation of newly issued tokens.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

With more and more companies opting for virtual shareholder meetings following the onset of the COVID-19 pandemic, participatory shareholder meetings, which are virtual meetings that allow for real-time voting and questions (i.e., hybrid meetings), are attracting increasing attention. In response to these trends, some blockchain companies have begun to implement virtual shareholder meetings using blockchain technology, which enables prevention of fraudulent activities such as voting via identity theft. For instance, in June 2022, Asteria Corporation announced that it conducted a virtual-only shareholders' meeting in the form of a virtual meeting using its proprietary blockchain-based voting/question-entry/motion procedure system.

In addition, on December 25, 2023, Osaka Digital Exchange Co., Ltd. announced the commencement of trading on "START," a private trading system for security token transactions. As Japan's first secondary distribution market for security tokens, START aims to support flexible financing for companies and provide investors with a wide range of investment opportunities.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

Several players in the financial sector are attempting to utilize artificial intelligence in their businesses. For example, some asset managers have launched mutual funds that use artificial intelligence to make automated investment decisions. Some banks have also announced launches of new loan programs utilizing artificial intelligence as an automated loan screening tool. Moreover, some insurance companies are also attempting to utilize artificial intelligence to handle insurance claims and process claim payments. In general, the national government of Japan has adopted a proactive attitude towards the use of artificial intelligence. In the financial sector, the FSA has supported the testing of a project in which an IT vendor and certain financial institutions attempted to use artificial intelligence for primary screening of customers' voices and to pick out potential compliance breaches and customer complaints. The FSA recently announced the successful completion of the project, stating that the use of artificial intelligence would be feasible for screening processes of this kind.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

In Japan, insurtech appears to be a bit behind other areas of fintech, such as payments.. With that said, Japanese insurance companies generally appear to be interested in insurtech. For instance, some major Japanese insurance companies have launched their new "risk tech" services, using data they had collected through their existing businesses.

19. Are there any areas of fintech that are particularly strong in your jurisdiction?

In Japan, digital asset-related businesses, mobile payment services, financial account aggregation services and robo-advisors are relatively prevalent. The COVID-19 pandemic has intensified competition among mobile payment service providers. On top of that, the BNPL (buy now, pay later) industry is also expanding.

Since 2020, security tokens, or digital securities, have become an area of focus. Because of amendments to the relevant laws and regulations, a number of financial institutions are entering this new market, focusing mainly on digital corporate notes and tokenised equity interests of real estate funds. Non-fungible token-related business is also becoming an area of focus. Non-fungible tokens are not governed by the FIEA or the PSA unless they are structured as securities, crypto assets or payment instruments.

Additionally, the Act on the Provision of Financial Services, which was amended on November 2021, enables the establishment of financial services intermediary businesses capable of integrating and intermediating cross-sectoral banking, securities and insurance financial services under a single licence.

Furthermore, the PSA and related laws and regulations, which were amended in June 2023, provide a definition for “stable coin” and regulates issuers and dealers thereof.

20. What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?

Most fintech start-ups in Japan seek collaboration with traditional financial institutions. Traditional financial institutions have already invested in fintech start-ups including blockchain tech companies. Accordingly, we seldom see disruption by fintech businesses. This trend is expected to continue.

21. To what extent are the banks and other incumbent financial institutions in your

jurisdiction carrying out their own fintech development / innovation programmes?

Mega Japanese banks and major broker-dealers have their own digital innovation departments and IT subsidiaries that carry out their own fintech development / innovation programmes. Regional banks and other mid-size incumbent financial institutions, on the other hand, find it more difficult to establish their own digital innovation departments and IT subsidiaries. Regardless of size, however, many banks and other incumbent financial institutions appear to be interested in exploring collaboration with fintech enterprises.

22. Are there any strong examples of disruption through fintech in your jurisdiction?

Due to the prevalence of cash payments in Japan, there is no immediate need for a Central Bank Digital Currency (“CBDC”). With that said, the Bank of Japan (“BOJ”) has been conducting research and development of CBDC for purposes of technological innovation, taking into consideration the trends in other countries as well as possible changes in social needs. In October 2020, the BOJ announced the “Bank of Japan’s Policy on Central Bank Digital Currencies”. Under the policy, the BOJ will develop a general purpose CBDC with broad usage, including by individuals and companies, in response to various anticipated changes in the economic environment. The BOJ also stated that it will conduct more in-depth studies on general purpose CBDCs, including the conduct of early demonstration experiments. Additionally, on April 5, 2021, the BOJ announced its commencement of a proof-of-concept experiment (Phase 1). Subsequently, on April 13, 2022, the BOJ released a report on the result of Phase 1 of the proof-of-concept regarding CBDCs. In “Proof-of-Concept Phase 2”, conducted from April 2022 to March 2023, the BOJ added several peripheral functions to CBDCs in order to ascertain certain important processing performance and technical capabilities in respect of the CBDC ledger. 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 any CBDC in Japan, but discussions continue to be held in this regard.

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