

FINANCIAL REGULATION BULLETIN

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Japan Permits Digital Salary Payments

New system to be implemented from April 1

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I. Background

Historically, Japanese regulation has required salaries to be paid in cash, with exceptions limited to payment into a bank account or a comprehensive securities account.

Innovation in the approach to salary payments, such as payroll advance services, has recently emerged. In a further sign of Japan's increasing promotion of a cashless society and the diversification of funds transfer services, the payment of salaries in digital form is to be permitted from April 1, 2023.

The Labor Standards Law will be amended effective from that date pursuant to a Ministerial Ordinance (the "Ordinance")¹ promulgated on November 28, 2022, which revises the Regulations for Enforcement of the Labor Standards Act (the "Enforcement Regulations"). The amended Enforcement Regulations establish a new framework for employees to elect to have their salaries paid into a digital account provided by a Type 2 Funds Transfer Service Provider ("FTSP") licensed under the Payment Services Act of Japan ("PSA") and which is designated by the Minister of Health, Labor and Welfare ("MHLW") for such purpose (a "Designated FTSP").

In connection with the Ordinance, the MHLW has issued guidance in the form of two Director-General Circulars² which set out further details of the regulatory

¹ <https://www.mhlw.go.jp/content/11200000/001017141.pdf> (Available in Japanese only)

² <https://www.mhlw.go.jp/content/11200000/001017089.pdf> (Available in Japanese only) and <https://www.mhlw.go.jp/content/11200000/001017090.pdf> (Available in Japanese only)

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requirements under the amended Enforcement Regulations and published detailed Supervisory Guidelines (the “MHLW Guidelines”)³ applicable to Designated FTSPs. The MHLW Guidelines have been subject to the public comment process, the results of which were published on March 8, 2023⁴.

The Financial Services Agency of Japan (the “FSA”) has also proposed an amendment to its Administrative Guidelines (Volume 3: Financial Companies 14: Funds Transfer Service Providers) (the “FSA Guidelines”)⁵, providing an indication as to its supervisory perspective on Designated FTSPs. The revisions to the FSA Guidelines have been published for public comment, the results of which are due to be published on March 19, 2023.

Employers and FTSPs will need to consider the new requirements and adapt their existing processes and procedures in order to implement a digital salary payment system.

II. Designated FTSPs

The category of FTSP permitted to handle digital salary payments is restricted to Type 2 FTSPs. To qualify, a Type 2 Funds Service Provider must be designated by the MHLW upon satisfying the following examination criteria prescribed under the amended Enforcement Regulations (Article 7-2, paragraph (1), item (iii)).

1. The employee’s account balance may not exceed one million yen, or measures must be taken promptly to reduce the balance to below that threshold. The measure contemplated is a sweep of the excess funds into a bank savings account or a comprehensive securities account (an “alternative account”) which the employee is required to designate for such purpose. The Designated FTSP must sweep such excess funds into an alternative account within the day of receipt into the employee’s account.

If the Designated FTSP has set a limit lower than one million yen, any excess over that lower limit must nevertheless be accepted into the employee’s account and any excess over one million yen swept into an alternative account within the day of receipt into the employee’s account.

³ <https://www.mhlw.go.jp/content/11200000/001069053.pdf> (Available in Japanese only)

⁴ <https://public-comment.e-gov.go.jp/servlet/Public?CLASSNAME=PCM1040&id=495220296&Mode=1> (Available in Japanese only)

⁵ <https://www.fsa.go.jp/news/r4/sonota/20230217-2/20230217-2.html> (Available in Japanese only)

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A Designated FTSP may set up measures which require the employee themselves to reduce their account balance to below the one million yen limit, but even in this case, the Designated FTSP must have measures in place to reduce the balance to below the one million limit within the day of receipt in the event that the employee fails to do so.

2. Measures must be taken to ensure the prompt repayment of the full account balance to the employee in the event of a bankruptcy etc. of the Designated FTSP. This measure is in addition to the existing statutory requirements under the PSA for a Type 2 FTSP to set up security measures for the protection of customer outstanding obligations (i.e. any combination of cash collateral, third party bank guarantee, or a trust arrangement with a trust bank) and requires a guarantee arrangement covering the employee's FTSP account to be entered directly between the employee and a financial institution which has agreed with the Designated FTSP to be jointly and severally liable with it for its obligations to the employee. Employees will be able to obtain redress under this guarantee more quickly and prior to any distribution under the existing process for liquidation of an FTSP and the distribution of assets prescribed under the PSA.

The MHLW has published a form of guarantee agreement for the purpose⁶, however the MHLW Guidelines indicate that, so long as the funds in the employee's account are effectively secured, such arrangements do not strictly have to take the form of a guarantee agreement.

3. The Designated FTSP must have measures in place to fully compensate employees for losses caused by unauthorized use occurring without the fault of the employee and a guarantee of reimbursement must be specified in the Designated FTSP's terms and conditions. There may be no uniform disclaimer for losses for unauthorized use caused by the employee and such cases must be decided on a case-by-case basis. Any period designated for the lodging of claims for unauthorized use must be at least 30 days.
4. Any period set under the Designated FTSP's terms and conditions for deeming an account to be dormant may not be less than ten years from

⁶ <https://www.mhlw.go.jp/content/11200000/001069095.docx> (Available only in Japanese)

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the last date on which the account was used for a funds transfer.

5. Receipts and transfers must be available in units of at least one yen.
6. Employees must have at least one option to cash or withdraw funds in fiat currency in units of at least one yen, i.e. by withdrawal through ATMs or cash dispensing machines or by transfer into a bank account. Provided one option is available, other cashing or withdrawal mechanisms may require different minimum values. Further, an option to cash or withdraw funds in units of at least one yen at least once per calendar month without the incurrence of fees must be provided.

Digital salary payments may not take the form of points or cryptocurrency that are not convertible to yen.

7. There must be a system in place to report the status of the performance and financial condition of the services to the MHLW in a timely manner. Under this item, the Designated FTSP will be required to file an annual report with the MHLW covering specified information regarding the status of its implementation of a digital salary payment system as well as other businesses operated by it. Ad hoc reports may also be required by the MHLW. The name of the guarantor and a copy of the guarantee agreement must also be submitted.

Reporting to the MHLW will also be required of any guarantor of the employee's account as referred to in item 2. above.

8. In addition to items 1-7 above, an applicant for Designated FTSP status must demonstrate that they have the technical capability to "properly and reliably" perform the work related to the digital payment of salary, and must have "sufficient social credibility". While these matters will be considered in a holistic way by the MHLW, the following key requirements must be satisfied:
 - (i) the applicant must have in place a system that enables it to conduct its business properly and reliably in accordance with the PSA and its regulations. In particular, at the time of application for designation, the applicant must not have been the subject of a

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- business improvement order pursuant to Article 55 of the PSA or a business suspension order pursuant to Article 56, paragraph (1) of the PSA;
- (ii) the applicant must have in place measures to ensure that salary will be paid, such as by confirming at the time of initiation of payment by the employer that employees have an account with it for the receipt of funds, and measures to confirm that the said account meets the requirements for making salary payments;
 - (iii) the applicant must have obtained a third-party certification with respect to its handling of personal information, such as a “Privacy Mark” or ISMS Accreditation. If the applicant is in the process of applying for third-party certification, the application may be accepted if materials are submitted indicating that the application is in process and the expected timing of receiving certification. Note, however, that the requirements for designation will not be met, nor the applicant approved, until the third-party certification is completed; and
 - (iv) there are no other facts that may raise doubts about the technical capability or social credibility of the applicant.

In addition to the above requirements, it can be expected that the FSA Guidelines will be amended to include specific protections for digital salaries in areas such as system security, BCP, AML/CT risk management and the appropriate calculation of and security protection for outstanding liabilities.

It is to be noted that the MHLW will publish a list of Designated FTSPs and employees may select more than one from that list.

III. Implementation

Key requirements for implementation by an employer are:

1. The conclusion of a labor-management agreement between the employer and a representative of a majority of the employees (or with a union representing at a majority of employees) with respect to digital salary payments; and
2. Employee consent.

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The employer must obtain individual consent from any employee who wishes to receive their salary in digital form.

As a precondition for obtaining such consent, the employer (or the Designated FTSP entrusted on its behalf) must provide a detailed written explanation of the proposed digital payment system to the employee, covering certain “Points to Note” (*ryuui jikou*), which largely track the examination criteria applicable to Designated FTSPs discussed above.

The MHLW has issued a standard form of written consent for reference of employers seeking to introduce a digital salary payment system, which also contains the “Points to Note”⁷.

The points to note cover the following:

1. The employer must continue to offer the employee the option of having wages paid in cash, or into a bank savings account or a securities account
2. Salary paid into an FTSP account differs from savings accounts and may only be used for settlements and remittances within the scope of funds transfer (*kawase torihiki*)
3. The scope (i.e. salary, bonuses etc.) and amount that may be transferred to the account may be subject to account and transaction limits set by the Designated FTSP based on the employee`s actual and expected use of the funds
4. Salary payments in excess of the maximum limit of one million yen set under the PSA will be swept into an alternative account, which must be designated in advance by the employee
5. Digital salary payments held in accounts with a Designated FTSP do not benefit from protection under the Deposit Insurance Law that protects bank accounts. However, the funds will be protected by the guarantee required to be entered with a financial institution as discussed above
6. The scope of reimbursement for unauthorized use
7. The ten year minimum non-use period that may be set for dormant accounts
8. The requirements for availability of funds

The employee must consent in writing (including by electronic means) to receive

⁷ <https://www.mhlw.go.jp/content/11200000/001069102.docx> (Available in Japanese only)

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salary into their account with the Designated FTSP. Oral confirmation alone is not sufficient.

The written consent is required to state, among other things:

1. The scope and amount of wages to be paid digitally
2. The name of the Designated FTSP
3. The name of the specific funds transfer service (for example, if the Designated FTSP has a branded name for the service)
4. The account number (account ID) and name of the accountholder
5. The desired start date
6. Details of the bank account or the general securities account designated as an alternative account

Other requirements for implementation include:

1. Amended work regulations
2. Specific content for pay stubs
3. Timing of payments and availability for use of funds
4. Requirements for employers to cease payment to Designated FTSPs upon the occurrence of certain events such as cancellation of its designation by the MHLW or bankruptcy etc.

PUBLICATIONS

- Article "Getting the Deal Through - Financial Services M&A 2022 - Japan Chapter"
Publication Getting the Deal Through - Financial Services M&A 2022
Author Koji Toshima and Masaki Yukawa

NEWS

- [Top Ranking Received From The Legal 500 Asia Pacific 2023](#)
Mori Hamada & Matsumoto has been ranked in the top tier of recommended law firms in Japan, Thailand (Chandler MHM Limited), Myanmar (Myanmar Legal MHM Limited) and Vietnam for several areas of practice in The Legal 500 Asia Pacific 2023. The following lawyers have been acknowledged as "Hall of Fame," "Leading Individuals," "Next Generation Partners" or "Rising Stars" in those practice areas. For more information, please refer to the Legal 500's website.
<https://www.mhmjapan.com/en/news/articles/2023/6.html>

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➤ [Top Ranking Received From Chambers FinTech 2023](#)

Mori Hamada & Matsumoto and our lawyers Masakazu Masujima and Takane Hori are recognized in FinTech Legal in Japan for Chambers FinTech 2023.

• Practice areas

JAPAN

- FinTech Legal (Band 1)

• Lawyers

JAPAN

FinTech Legal

- Masakazu Masujima (Band 1)
- Takane Hori (Band 1)

For more information, please refer to the Chambers' website.

<https://www.mhmjapan.com/en/news/articles/2022/65175.html>

➤ [Lawyers from Mori Hamada & Matsumoto were included in the 13th edition of The Best Lawyers in Japan™ and the inaugural Best Lawyers: Ones to Watch in Japan™](#)

In the 13th edition of The Best Lawyers in Japan™ by Best Lawyers®, MHM received the "Law Firm of the Year" award in the categories of Banking and Finance Law and Corporate and Mergers and Acquisitions Law. In addition, seven lawyers have been selected as "Lawyer of the Year" in the area of below.

Yoichi Okuda - Criminal Defense

Takeshi Mukawa - International Business Transactions

Yoshihiro Kojima - Corporate and Mergers and Acquisitions Law

Masakazu Masujima - FinTech Practice

Hiroki Aoyama - Structured Finance Law

Tetsushi Kamimura - Media and Entertainment Law

Hiroshi Oyama - Tax Law

Furthermore, 127 lawyers from our firm have been included in The Best Lawyers in Japan™, and 63 lawyers from our firm have been included in Best Lawyers: Ones to Watch in Japan™.

<https://www.mhmjapan.com/en/news/articles/2022/55.html>

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