

ARTICLE:

HOW BANK DEPOSITORS ARE PROTECTED IN JAPAN

By Hironao Kaneko

Introduction

The withdrawal of cash from an ATM using a stolen or forged cash card is a common problem troubling countries across the world. The response naturally differs between States because of the differences between legal systems.¹ In Japan, the Depositor Protection Act was enacted to respond to the problem of improper (unauthorized or illegal²) withdrawals in 2005.³ If certain conditions are fulfilled, the depositor can claim an indemnity for the unauthorized withdrawal from the financial institution. Of interest is that even after the Act entered into force, the numbers of unauthorized withdrawals had not decreased dramatically.

This article introduces some statistical data relating to unauthorized withdrawals; describes the process of the Depositor Protection Act; considers a number of judgments in relevant cases, and sets out the practical response by financial institutions.

Implications from statistical data

The Financial Service Agency published the latest statistical data of forged bank cards and stolen bank cards in April 2011.⁴ For the purposes of this article, the historical statistical data (beginning from April 2000) is summarized into four categories, based on the reports from financial institutions about the number of cases and the amount of losses through illegal withdrawals using forged bank cards, stolen bank cards, stolen bank books and internet banking. The incidence of unauthorized withdrawals by means of forged cards has gradually decreased. However, unauthorized withdrawals using stolen cards and stolen bank books has remained at the same level. The decrease in the use of forged cards may well see a reduction in

indemnity claims.

Summary of data

In the tables below, the data collection period of each category of crimes is different. Forged bank cards cover the period from April 2000 to December 2010. Stolen bank cards cover the period from February 2005 to December 2010. Stolen bank books cover the period from April 2003 to December 2010, and internet banking covers the period from February 2005 to December 2010.

Period	April 2007 – March 2008	April 2008 – March 2009	April 2009 – March 2010	April 2010 – December 2010 (*Convert a year)	Through all periods	Total
Crime categories						
Forged bank card	704	435	305	173 (*231)	April 2000 – December 2010	3,752
Stolen bank card	5,299	5,039	5,933	4,783 (*6,377)	April 2005 – December 2010	34,578
Stolen bank book	289	266	225	168 (*224)	April 2003 – December 2010	2,465
Internet banking	233	136	57	59 (*76)	February 2005 – December 2010	637

Table 1 The number of cases for the four categories of crimes

(* This data collection period is for nine months. ‘Convert a year’ means that the author has added data to estimate the full year by multiplying by 1.33.)

1 In the European Union, Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance), OJ L 319, 5.12.2007, p. 1–36 applies,

and in the United States of America, U. S. Code Title 15, Chapter 41, Subchapter VI, § 1693f. Error resolution, applies.

2 The Depositor Protection Act uses the term ‘Fusei’. This term generally means not right, wrong, illegal, improper.

3 Some Japanese Statutes and case judgments are

translated into English by a government support project entitled the ‘Transparency of Japanese Law Project’. This source of legal information is available at <http://www.tomeika.jur.kyushu-u.ac.jp/>.

4 <http://www.fsa.go.jp/news/22/ginkou/20110421-1.html>.

HOW BANK DEPOSITORS ARE PROTECTED IN JAPAN

Period	April 2007 – March 2008	April 2008 – March 2009	April 2009 – March 2010	April 2010 – December 2010 (*Convert a year)	Through all periods	Average
Crime categories						
Forged bank card	61	66	55	85	April 2000 – December 2010	107
Stolen bank card	41	45	47	58	April 2005 – December 2010	52
Stolen bank book	160	117	105	80	April 2003 – December 2010	197
Internet banking	81	105	60	90	February 2005 – December 2010	103

Table 2 Average amount of damage per incident

Notes to Table 2 (These notes are attached to the original statistical data.)

1. The unit is ten thousand Japanese Yen.
2. The Law of protecting depositors from illegal withdrawal by automated teller machine (ATM) using a forged card and a stolen card was in force from 10 February 2006.
3. The number of cases of indemnity is the number of cases where the indemnity was met in whole or part by financial institutions.
4. The total number is summed up by each of the crime categories for the periods indicated.

Period	April 2007 – March 2008	April 2008 – March 2009	April 2009 – March 2010	April 2010 – December 2010 (*Convert a year)	Total April 2000 – December 2010
Crime categories					
Indemnity claim	679	424	287	112 (*149)	3,612
Accepted	654 (96.3%)	413 (97.4%)	269 (93.7%)	112 (100.0%)	3,485 (96.5%)
Denied	25 (3.7%)	11 (2.6%)	18 (6.3%)	0 (0%)	127 (3.5%)

Table 3 Number of indemnity claims and decisions relating to forged cards

Notes to Table 3 (These notes are attached to the original statistical data.)

1. The main reasons for a financial institution to deny an indemnity claim are: where a depositor, having made a claim, withdraws it (63 cases), and gross negligence of the depositor (16 cases).
2. The cases of claims for an indemnity claim include cases where withdrawals were made using a forged card, and after an investigation (or a hearing) it was proved (or shown) that the spouse or a relative of the depositor used the genuine card issued to the depositor. If these cases were withdrawn from the cases of indemnity claims, the ratio of indemnity acceptance may be changed by (from 96.5%) up to 98.7%.

Period	April 2007 – March 2008	April 2008 – March 2009	April 2009 – March 2010	April 2010 – December 2010 (*Convert a year)	Total April 2005 – December 2010
Crime categories					
Indemnity claim	5,284	5,008	5,834	3,554 (*4,739)	33,139
Accepted	2,967 (56.2%)	2,668 (53.3%)	3,173 (54.4%)	1,894 (53.3%)	19,423 (58.6%)
Denied	2,317 (43.8%)	2,340 (46.7%)	2,661 (45.6%)	1,660 (46.7%)	13,716 (41.4%)

Table 4 Number of indemnity claims and decisions relating to stolen cards

Notes to Table 4 (These notes are attached to the original statistical data.)

1. The main reasons for the financial institution to deny a claim for an indemnity are: where a depositor, having made a claim, withdraws it (4,234 cases), unauthorized withdrawal by using a lost card (2,854 cases) and withdrawal by a spouse or a relative of the depositor (1,788 cases).
2. The cases of claims for an indemnity claim include cases where withdrawals were made using a forged card, and after an investigation (or a hearing) it was proved (or shown) that the spouse or a relative of the depositor used the genuine card issued to the depositor. If these cases are removed from the cases of indemnity claim, the ratio of indemnity acceptance may be changed by (from 58.6%) up to 83.3%.

HOW BANK DEPOSITORS ARE PROTECTED IN JAPAN

Period	April 2007 – March 2008	April 2008 – March 2009	April 2009 – March 2010	April 2010 – December 2010 (*Convert a year)	Total April 2003 – December 2010
Crime categories					
Indemnity claim	214	248	199	105 (*140)	2,241
Accepted	15 (53.7%)	143 (57.7%)	96 (48.2%)	61 (58.1%)	763 (34.0%)
Denied	99 (46.3%)	105 (42.3%)	103 (51.8%)	44 (41.9%)	1,478 (66.0%)

Table 5 Number of indemnity claims and decisions relating to stolen bank books

Note to Table 5 (These notes are attached to the original statistical data.)

The cases of claims for an indemnity claim include cases where withdrawals were made using a stolen bank book, and after an investigation (or a hearing) it was proved (or shown) that the spouse or a relative of the depositor used the genuine card issued to the depositor used the bank book. If these cases are removed from the cases of indemnity claim, the ratio of indemnity acceptance may be changed by (from 34.0% up to 43.6%.

Period	April 2007 – March 2008	April 2008 – March 2009	April 2009 – March 2010	April 2010 – December 2010 (*Convert a year)	Total April 2005 – December 2010
Crime categories					
Indemnity claim	207	65	28	20 (*27)	467
Accepted	186 (89.9%)	34 (52.3%)	9 (32.1%)	10 (50.0%)	346 (74.1%)
Denied	21 (10.1%)	31 (47.7%)	19 (67.9%)	10 (50.0%)	121 (25.9%)

Table 6 Number of indemnity claims and decisions relating to internet banking

Note to Table 6

The cases of indemnity claim include cases where the withdrawal was by a third person, but after an investigation (or hearing) it was proved (or shown) that the withdrawal was by the spouse or a relative of the depositor. If these cases are removed from cases of indemnity claim, the ratio of indemnity acceptance may be changed by (from 74.1%) up to 85.4%.

Japanese Law does not provide for a ‘lost card’ directly

Section 3 of the Depositor Protection Act⁵ excludes the applicability of the Civil Code where funds are withdrawn by the use of a forged card. Where a withdrawal is made using a forged card, section 4 provides that the customer is indemnified in full, on condition that the depositor is not grossly negligent. Where a withdrawal is made using a stolen card, section 5 provides that the customer can be indemnified by up to three fourths of the amount of the unauthorized withdrawal after the depositor has given notice to the financial institution about the theft, even if the depositor is deemed to be slightly negligent. The combination of the provisions of the Depositor Protection Act and the Civil Code increase the opportunity for the depositor to obtain an indemnity payment for an unauthorized withdrawal, in comparison to the provisions contained in the Civil Code alone. The Depositor Protection Act also provides an indemnity for the unauthorized withdrawal or the provision of a loan by way of an ATM using forged and stolen cards (section 2(4) and (5)). The word ‘card’ means a card for the withdrawal of funds, or any other instrument, such as a bank book that also functions as a means of obtaining a loan for money, and issued to the depositor in accordance with a contract of deposit and savings with a financial institution. However, the Act does not cover the position when a card is lost. In this respect, the law in Japan differs from the EU payment services Directive, in that article 61(4) provides that the ‘payer shall not bear any financial consequences resulting from use of the lost, stolen or misappropriated payment instrument after notification in accordance with Article 56(1)(b), except where he has acted fraudulently.’⁶ Article 4(3) defines a payment instrument as ‘any personalised device(s) and/or set of procedures agreed between the

⁵ The title of the law literally translated is ‘the law of protecting the depositors from improper withdrawal by ATM using a forged card or instrument and a stolen card or instrument’.

⁶ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and

2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance), OJ L 319, 5.12.2007, p. 1–36.

payment service user and the payment service provider and used by the payment service user in order to initiate a payment order'. The article does not specifically refer to the use of forged cards or other forms of payment instrument that have been forged. A 'payment service user' means only the authorized person, such as the depositor using a genuine card. Article 4(10) provides the definition of 'payment service user', which means 'a natural or legal person making use of a payment service in the capacity of either payer or payee, or both'. Where a third person uses a forged card, for instance, they are not a payer or payee, because they must be 'in the capacity of either payer or payee', and a third party in possession of a forged card does not have any authority, because the card is forged. A forged card cannot be considered to be a 'payment instrument' because it is not a device that has been personalized by the provider for the customer. In the United Kingdom, the Directive has been implemented by the Payment Services Regulations 2009 (SI 2009 No. 209), which provides corresponding regulations.

The process of enacting the Depositor Protection Act

The final report of 'The study group on the problems of forged cash card', sponsored by the Japanese Financial Service Agency (FSA), was published in 2005.⁷ The study was chaired by Professor Shinsaku Iwahara⁸ of Tokyo University, and the group consisted of scholars in contract law, bankers, police office and consumer protection institutions.⁹ Based on the discussion of the study group, in a short space of time, House members of the Diet drafted and enacted the Depositor Protecting Act. Enacted in 2005 (The Law No.94, 2005), it was in force from 10 February 2006.

Relationships between the Act and the Civil Code

Before the enactment of the Depositor Protection Act, the effect of an unauthorized withdrawal was mainly governed by article 478 of the Civil Code, which provides:¹⁰

'A performance by the person to a Quasi possessor of

claim is valid, if the person is bona fides and without negligence concerning their performance.'

Historically, this article was modeled on article 1240 of the French Civil Code over one hundred years ago.¹¹ The technology having changed, the original article was not intended to apply to unauthorized withdrawals by ATM. This was the main reason that discussions on the application of article 478 in relation to unauthorized withdrawals by ATM had continued to be disputed in litigation in Japan. The Depositor Protection Act is an attempt to solve this controversy, although discussions continue because of the complexity of the conditions relating to the depositors negligence for an indemnity claim, as in the 2008 case (for which see below). Section 3 of the Depositor Protection Act excludes the application of the provisions of article 478 to withdrawals using a forged card, but the article still applies to withdrawals using a stolen card. Section 3 reads as follows:

Section 3 (Special rule of the Civil Code concerning to withdrawal and loan by ATM using a card or instrument)

Article 478 of the Civil Code does not apply to withdrawals by ATM and loans by ATM using a card or an instrument similar to a card (hereinafter "ATM withdrawal and loan"). Excepting that the article of the Civil Code applies to the ATM withdrawal and loan by the genuine card or other instrument.

According to these provisions, if a withdrawal made by ATM is proper or valid, the withdrawal has the effect of performance by the financial institution to the depositor. It is not necessary to indemnify the depositor.

Section 4 of the Depositor Protection Act provides for the legal effect of the withdrawal of money by way of an ATM using a forged card:

Section 4 (Effect of the ATM withdrawal and loan by the forged card or instrument)

1) The withdrawal by ATM using the forged card or

7 http://www.fsa.go.jp/singi/singi_fccsg/gaiyou/f-20050304-singi_fccsg/01.pdf.

8 Professor Shinsaku Iwahara is also the author of "Electronic Payment and Law" (Denshi-Kesai-to-Hou) (Yuhikaku 2003), in which he discussed the problem of unauthorized withdrawals.

9 http://www.fsa.go.jp/singi/singi_fccsg/singi_fccsg.html.

10 The Transparency of Japanese Law Project translates article 478 of the Civil Code as 'Any performance made vis-a-vis a holder of quasi-possession of the claim shall remain effective to the extent the person who performed such obligation acted without knowledge, and was free from any negligence.' This does not seem to be a literal translation and may not be helpful to

describe why the Japanese courts had discussed the applicability of the article to unauthorized withdrawals by way of an ATM.

11 Shoji Kawakami, 'Article 478 of the Code of Civil, performance to the quasi possessor of claims', in Hironaka & Hoshino, editors, *Minpou-No-Hyakunen*, Volume 3 at 165 (Yuhikaku 1998).

other instrument is valid, if i) the withdrawal is based on the intention of the depositor who concludes the contract of deposit and saving relating to the withdrawal by ATM, or ii) on condition that the financial institution concluding the contract of deposits and savings is in good faith and without negligence relating to the withdrawal by ATM, the withdrawal is based on the gross negligence of the depositor.

- 2) The depositor is responsible for the loan by ATM using a forged card or instrument, if i) the loan is based on the intention of the depositor who concludes the contract of deposit and saving relating to the loan by ATM, or ii) on condition that the financial institution concluding the contract of deposits and savings is in good faith and without negligence relating to the loan by ATM, the loan is based on the gross negligence of the depositor.

As mentioned above, the provisions of article 478 of the Civil Code applies to withdrawals using a stolen card. This means that the Depositor Protection Act provides for a special provision in relation to the meaning of article 478. Article 478 does not require the depositor to be negligent. However, by section 5 of the Depositor Protection Act, it is the responsibility of the depositor not to be negligent. It should be noted that where the depositor is deemed to be slightly negligent, the indemnity claim is limited to three fourths of the amount of the illegal withdrawal. Section 5 reads as follows:

Section 5 (Indemnity of the amount of the ATM withdrawal and loan using a stolen card)

- (1) The depositor can request the financial institution that he concludes the deposits and savings contract the indemnity the amount of the withdrawal by ATM using a stolen card or instrument, where his/her genuine card or instrument had been stolen and all conditions provided in subdivisions are fulfilled.
 - (i) the depositor gave quick notice to the financial institution after recognizing the fact of the theft of the genuine card or instrument
 - (ii) the depositor explained the situation of the theft

adequately and without delay for the request to the financial institution

- (iii) the depositor informed the financial institution that he/she had reported the theft to the investigation office or presented materials presuming the theft as defined by the Rule of the Cabinet Office.

- (2) The financial institution that is claimed by the depositor of the indemnity provided by the subsection 1, should pay the amount of withdrawal by ATM to the requesting depositor (it is limited the amount of withdrawals by ATM after the standard day. Hereinafter “the amount of acceptable indemnity”), except that the financial institution proves the fact that the withdrawal by ATM was not illegal with the use of a stolen card or instrument, or the withdrawal is based on the intention of the depositor requesting the indemnity. In case that the financial institution proves that the financial institution is bona fides and not negligent relating to the illegality of the withdrawal by ATM using a stolen card or instrument, and that the withdrawal is based on the negligence (except for gross negligence) of the depositor, the financial institution should pay to the requesting depositor three fourth of the amount of acceptable indemnity.

The legal position with respect to negligence and the extent of the depositor’s responsibility under the Depositor Protection Act is very complex, for both the financial institution and the depositor, because of the decisions made by judges before the Depositor Protection Act was brought into force.

Supreme Court cases before the Depositor Protection Act

In the following section, a number of cases are discussed, illustrating the approach taken by the Supreme Court in relation to the provisions of article 478 of the Civil Code.

Supreme Court decision on 19 July 1993¹²

The plaintiff depositor had 2 million and 50 thousand Japanese yen in their savings account at the defendant bank. An unknown person effected withdrawals in one

¹² Supreme Court decision on 19 July 1993, Hanrei-Jiho No. 1489 at 111. See also, the English translation in the *Transparency of Japanese Law*

Project* web site, http://www2.osipp.osaka-u.ac.jp/~nomura/project/inter_finance/eng/casesj%20English.html. The original decisions are:

Tokyo District court decision on 1 January 1989, and Tokyo High Court decision on 19 July 1989.

day by way of ATMs (seven times at one branch and five times at another bank that had an agreement to use the ATMs of the plaintiff's bank), which left only 100 thousand Japanese yen in his account. The plaintiff claimed the payment of 1 million and 950 thousand Japanese yen from the defendant bank, based on the savings contract between the plaintiff and his bank. It is not clear from the court record of this case whether the withdrawals were by way of a stolen card or a forged card. It is certain that a third person other than the plaintiff withdrew the money from the ATMs according to the video tape recording.

In this case, the magnetic stripe on the reverse of the cash card included a record of the personal identification number (PIN) that the depositor assigns (and the bank records) when the card was issued.¹³

It was accepted that it was possible to obtain the data on the magnetic stripe through a card reader and a personal computer that could be purchased on the general market. However, the person using such equipment needed to have the knowledge of a computer and sufficient technical experience to decode the data on the card. Taking these circumstances into account, the management of the PIN by the bank was deemed to be sufficient to enable the bank to rely on the clause that the bank was free from the indemnity claim. The court rejected the indemnity claim by the depositor.

The members of the court decided that the provisions of article 478 acted to make the bank immune from all obligations where the bank checked the correctness of the cash card and PIN automatically by way of the ATM where the withdrawal was effected. Even if the genuine card and correct PIN was used, the bank was not obliged to indemnify the depositor where a withdrawal by ATM took place by a person other than the depositor, unless there were special circumstances, such as the insufficiency of the management of the PIN code by the bank. The Supreme Court concluded that article 478 of the Civil Code applied to a quasi-claimer, that is to the withdrawal by an ATM by a person other than depositor. As a result, the bank could only be negligent if there were special circumstances, such as a failure of the bank to keep the PIN secure. In effect, it meant that the bank was free from an indemnity claim for the unauthorized withdrawal of funds. On the other hand, it was necessary for the depositor to prove that the special circumstances existed in the bank to indicate

the bank had not maintained sufficient security when claiming indemnity by means of an unauthorized withdrawal.

A change of view

The Supreme Court maintained the applicability of article 478 of the Civil Code to the withdrawal of funds by way of an ATM for some years. However, in a 2003 case, the Supreme Court reviewed the standard when deciding the issue of the negligence of the bank in cases concerning unauthorized withdrawals by ATMs. In this case, it was determined that the bank is not negligent for the unauthorized withdrawal of funds by way of an ATM, providing the bank establishes that it has taken as many appropriate actions as it can to construct, build and manage the ATM system in such a way as to exclude the possibility of unauthorized withdrawals. It meant that the bank is required to prove the fact that the ATM system in its totality is established and managed to exclude unauthorized withdrawals. If a bank fails to prove the integrity of its systems, the bank is obliged to indemnify the depositor for the unauthorized withdrawal. The 1993 Supreme Court decision placed the burden of proof on the depositor, who had to prove the bank had insufficient security. The 2003 Supreme Court decision shifted the burden back to the bank.

Supreme Court decision on 8 April 2003¹⁴

In this case, the appellant possessed a bank book and a cash card. She decided that the PIN of her cash card would be the same four digits as her car registration number. The appellant had her car stolen, which was parked near her house. She left her bank book in the glove compartment. She reported the theft to the police office on the day of the theft, and reported the theft to the bank the next day, after remembering that she left her bank book in the glove compartment. Before she reported the theft of her bank book, an unknown person withdrew 8 million Japanese Yen by way of an ATM, using the stolen bank book. The appellant claimed an indemnity from the bank, asserting that the withdrawal was invalid.

The appellant was not aware that she could withdraw money through an ATM using her bank book without her cash card, because her bank did not provide any information about the possibility of the withdrawal by

¹³ In Japan, the PIN is usually determined by the depositor, because they write their chosen PIN on the application form before the card is issued; if the depositor does not change the PIN, they can use the PIN that they write on the application

form
¹⁴ Supreme Court decision on 8 April 2003, MINSHU Vol. 57 No. 4 at 337; Hanrei-Times No. 1121 at 96. See the English translation at the Transparency of Japanese Law Project web site,

http://www2.osipp.osaka-u.ac.jp/~nomura/project/inter_finance/eng/casesj%20English.html.

way of ATM using a bank book. The terms of use included a deposit and saving clause, a clause about the use of the cash card, and a clause relating to the immunity of the bank in relation to its obligations in respect of unauthorized withdrawals by way of an ATM. In the first instance, the High Court applied the provisions of article 478 of the Civil Code in this case, determining that the bank was not responsible for the withdrawal of the money by ATM using the stolen bank book.

The Supreme Court reversed the High Court decision. The Supreme Court decided that article 478 applied to withdrawals by an ATM, but a withdrawal is valid only if the bank proves that it was not negligent. To decide whether the bank is not negligent, it was for the bank to prove that the automatic verification of the bank book and PIN is accurate, and as a whole that the entire ATM system is established and managed in such a way as to exclude the possibility that a person can effect a transaction without authority.

In this case, the relevant contractual clause in relation to the use of the cash card failed to clarify that it was possible to effect withdrawals by way of an ATM using a bank book on its own, and that the bank maintained the system that permitted the withdrawals by way of an ATM using a bank book on its own. The members of the Supreme Court concluded that even if the appellant decided that the PIN of four digits would be the same as the car registration number, and forgot that she left the bank book in glove compartment of her motor car, these facts did not overcome the negligence of the bank. The bank was required to indemnify the depositor for the unauthorized withdrawal.

In this respect, the 2003 decision acted to provide better consumer protection for depositors against unauthorized withdrawals.

Cases decided after enforcement of the Depositor Protection Act

The Depositor Protection Act does not include a provision on the allocation of responsibility between a depositor and a financial institution where unauthorized withdrawals take place before the depositor receives the card. This has been left for the courts to decide.¹⁵

Osaka District Court decision on 17 April 2008¹⁶

The plaintiff's bank book, cash card, driving license and her husband's cash card were all stolen from her car. She immediately reported the theft to the police office. On the following day, she requested the bank to issue a new bank book and a cash card, and assigned the PIN as her birthday. A new bank book and cash card was sent to the depositor through the postal service, but they were stolen by a third party. The thief impersonated the plaintiff's husband by showing a document purporting to be a form of medical insurance identity at the post office, and received the bank book and cash card. The thief withdrew 4.95 million Japanese Yen by way of ATM using the new card. The plaintiff claimed an indemnity of the amount withdrawn against the bank, based on section 5(1) of the Depositor Protection Act.

The court focused on two issues: first, whether section 4(1) applied to the withdrawal, and second, whether the depositor was grossly negligent. On the first issue, the court concluded that the new card that was stolen before the depositor obtained possession of it, and it should be treated as a forged card or other instrument under the law. Respecting the second issue, the court concluded that the plaintiff was not grossly negligent relating to the withdrawal, even where she assigned the PIN to be the same numbers as her birthday. On this point, the members of the court reasoned as follows: in the management of the PIN for a cash card, Japanese financial institutions approve the used of an easy to remember PIN, such as the depositor's birthday, etc.¹⁷ The situation had not changed after the enactment of the Depositor Protection Act. The defendant bank did not prohibit the plaintiff from using a PIN that would be easy to remember.

Commentary

The critical defect of the traditional withdrawal system was pointed out some time ago.¹⁸ For a long time, it was believed that the bank's computer systems were protected by the double safety measures. The Japanese traditional system of withdrawals by means of the identification stamp ('Inkan') and bank book incorporated such double safety measures, in which two physical things had to be stolen at the same time to withdraw money. The cash card system also had double

¹⁵ If this case were in the United Kingdom, Regulation 58(2) of the Payment Services Regulations 2009 (SI 2009 No. 209) would apply, and the bank is responsible for the unauthorized withdrawal.

¹⁶ Osaka District Court decision on 17 April 2008,

Hanrei-Jiho No. 2006 at 87.

¹⁷ On the problems relating to the ability of a human to remember a large number of passwords, see Wendy Moncur and Dr Grégory Leplâtre, 'PINs, passwords and human memory', *Digital Evidence and Electronic Signature Law*

Review, 6 (2009) 116 – 122.

¹⁸ Tsuneo Matsumoto, *Forged or Stolen Cash Card and The Depositor Protection Act – Significance of Enactment and Remaining Issues*, *Hou-To-Computer*, No. 24 at 96 (2006).

safety measures, incorporating the physical item of the card with the PIN. Superficially, the cash card system was considered to have double safety measures (the physical item (a card) and intangible things (information, PIN). Even if a thief got hold of the card, but was not able to obtain the PIN, the card could not be used. The thief needed to obtain both the physical item and the intangible data. The assumption was, that only authorized machines would read the data. However, it is well known that thieves developed machines to read and record the data on the magnetic stripe, which then enables them to use the data to make withdrawals from ATMs without having the card issued to the customer by the bank. The fact is, that the thief would ensure that the depositor was not aware that the data on their magnetic stripe was being read and recorded without their knowledge.

The withdrawal system had previously been protected by a single measure. Until about ten years ago, the identification stamp was put on the back page of the bank book to verify the stamp of the withdraw slip when it was presented to the bank. If a thief stole a bank book, it was possible for them to forge the stamp from the image on the back page of the bank book. Some old style bank books continue to be used, because some depositors might not use the account often, and a new bank book is not issued until the old one is full. The image on the back page has now been abandoned. The system is now based on the card and PIN, but it may often be considered to only have a single safety measure, because the depositor often assigns the PIN to four digits that are easy to memorize, such as the birthday, telephone number, or car registration number.

To make up for the defect of safety measures of the card and PIN, a limit could be placed on the amount of money that could be withdrawn; the PIN could be changed to include more digits or letters of the alphabet, or by insurance. The application of more security measures might lead to the reduction of the social problems that occur in relation to the illegal withdrawal of money by way of ATM.¹⁹

Some commentators suggest that the contract

between a bank and a depositor should be reconsidered as an alternative solution to the Depositor Protection Act. Other scholars and bank practitioners argue²⁰ that the Depositor Protection Act is not the appropriate mechanism to solve the issues of unauthorized withdrawals. When the legislature enacts new laws and introduces regulations, it is suggested that the politicians ought to analyze and evaluate the effect of the proposed law on the national economy, business and customers in quantitative ways. As a matter of policy, it must be preferable to protect the depositor from loss caused by a theft or the forgery of a cash card. However, the Depositor Protection Act provides that the depositor is responsible for the amount of the unauthorized withdrawal where he is grossly negligent, but he is also responsible for twenty five per cent of the loss where he is considered to have been slightly negligent. There is a risk that the financial institutions fail to prove the depositor has been negligent, but also the danger that the depositor does not have a sufficient incentive to take care of their cash card or bank book. An alternative method of protection may be to shift the burden of proof, by making the depositor prove that they were not negligent, but limiting the loss that the depositor should bear as a trade off.

Bank practitioners argue that, based on the case law and provisions of the Act, Japanese financial institutions bear a strict liability for unauthorized withdrawals by way of ATMs using stolen or forged cash cards or other instruments.²¹ The judge in the 2008 Osaka District Court case emphasized the need to confirm the consistency between article 478 of the Civil Code and the Depositor Protection Act (especially section 4).²² Both provisions relate to the discharge of the financial institution from an indemnity claim by a depositor. However, the former does not require the depositor to be negligent, but the latter requires the depositor to be grossly negligent. The learned judge indicated that to confirm the consistency of the provisions of the Depositor Protection Act, the financial institution is responsible for furnishing sufficient evidence of the security steps employed by the bank to ensure the

19 Yasushi Nakayama, 'Issues for the evaluation of the Depositor Protection Act-focusing on internet banking', *Kinyu-Houmu-Ijijo* No. 1782 at 1 (2006). (He proposed introducing a multiple authentication system and a severance system of improper transactions); Naoyuki Iwashita, 'What should be requested for information security of financial institutions', *Kinyu-Kenkyu*, 2006.8 at 17, available at <http://www.imes.boj.or.jp/research/paers/japanese/06-1-05.pdf>. At the study group on the problems of forged cash card, these system are discussed on 15th April 2005,

http://www.fsa.go.jp/singi/singi_fccsg/gaiyou/f-20050415-singi_fccsg.html; in relation to multiple authentication systems, see http://www.fsa.go.jp/singi/singi_fccsg/gaiyou/f-20050415-singi_fccsg/03.pdf; for an examination of the tolerance of forgery of biometric authentication systems, see http://www.fsa.go.jp/singi/singi_fccsg/gaiyou/f-20050415-singi_fccsg/02.pdf. Some banks have introduced one time pass words as an optional service for internet banking. On the payment of a small additional fee, the depositor can borrow one time password equipment from the bank.

20 Akemi Nomura, *How funny Japanese Laws are, Second Session, Regulatory Impact Assessment of Japanese financial laws*, NBL No.900 at 84 (2009).

21 Toru Mikami, *Problems of the Depositor Protection Act*, Shindo & Uchida editors, *Continual Contract and Business Law Practices*, at 267 (Shoji-Houmu 2006).

22 Tsukasa Hara, 'Reconsider of conditions of Section 4 of The Law of Protecting the Depositors from Illegal Withdrawal by the ATM Using a Forged Card and a Stolen Card', *Hanrei-Times* No. 1320 at 5 (2010).

system is secure, and that the depositor understood the risk of unauthorized withdrawal, and the need for the depositor to take sufficient security steps themselves.

Reaction by financial institutions

The financial institutions responded to the passing of the Depositor Protection Act by amending the clauses of their contracts with customers relating to the use of the cash card. They explained to their customers that it was necessary to keep the cash card and PIN safe, and if the PIN is written down, it must not be stored with the cash card.²³ Section 9(4) of the Depositor Protection Act requests, but does not require depositors to make their own provisions for the safety of the cash card. After the decision of the Supreme Court in 2003, financial institutions have an obligation under the Depositor Protection Act to improve the security level of their banking systems, otherwise the institution is deemed as being negligent in respect of unauthorized withdrawals from ATMs.

Arguably, one of the most effective measures to improve the level of security is to replace the present ATMs by a machine that supports the integrated circuit cash card (IC bank card) to provide for authentication by using biometric measurements. The problem with this suggestion is that financial institutions and other business entities need to introduce replacement machines slowly, because of the costs involved.²⁴

Each year the Japanese FSA publishes a document entitled 'Reaction to the forged bank card and internet banking issues', which also describes the introduction of the IC bank card, the biometric IC bank card, and the authentication procedure for internet banking based on the survey carried out by a questionnaire to financial institutions.²⁵ The data shows that the ratio of ATMs that support biometric authentication has increased year by year, but they are less than half of all the ATMs.

	2007	2008	2009	2010
Bank cards issued	340,790	469,314	478,436	488,389
IC Bank Card	9,934 (2.9%)	26,283 (5.6%)	41,788 (8.7%)	57,471 (11.8%)
Biometrics	2,051 (0.6%)	11,626 (3.1%)	26,456 (5.5%)	36,151 (7.4%)
ATM	126,537	155,768	158,020	158,207
Supporting IC bank card	54,139 (42.8%)	99,529 (63.9%)	119,624 (75.7%)	126,672 (80.1%)
Supporting biometrics	18,499 (14.6%)	51,773 (33.2%)	66,463 (42.1%)	69,782 (44.1%)
Financial Institutions	1,626	1,611	1,543	1,505
Providing internet banking	1,543	1,520	1,460	1,412
Multi step authentication	1,538 (99.7%)	1,516 (99.7%)	1,457 (99.8%)	1,409 (99.8%)

Table 8 IC card, biometrics card, authentication procedure for internet banking²⁶

Limiting the amount of withdrawal by cash card

Most financial institutions have revised the amount a customer can withdraw. It is now lower than previously. For the magnetic type card, the initial limitation to withdraw cash by way of ATM is up to 500,000 yen per day, and the amount that can be transferred by ATM is limited to 1 million yen per day. The depositor has the opportunity to set the limitation to a lower amount than the initial amount set by the financial institution. On the other hand, the limit is set at 10 million yen per day for the biometric authentication card. It depends on the individual financial institution as to whether the depositor can change the limitation to a lower amount

23 An example of explanation of a bank is something like the following: 'Request to customers. Please keep your cash card and a PIN strictly safe. You are especially to avoid the following things, otherwise we may not indemnify your loss.

Not to pass a cash card to a third person or let a third person known your PIN; Not write your PIN on a cash card or to keep and take a memo of a PIN with a cash card; To assign a PIN to the number, for example birthday, home address, home telephone number, office telephone number, registration number of automobile etc., which a third person could know; To use a PIN as a lock number of shelf and safety box etc.; To leave a cash card in an automobile, or to leave it

in a situation where it can be easily stolen because of being deeply drunk.'

24 In Japan there are many ATMs in convenience stores. For example the SEVEN-ELEVEN convenience store chain has 15,639 ATMs (3 July 2011) and the LAWSON store chain has 8,559 ATMs (5 July 2011). Most ATMs in banks are not available 24 hours all the year round. On the other hand, an ATM in a convenience store is available all the time. The number of ATMs in convenience stores is increasing. Convenience stores save the cost of the ATM and acquire customers competing with the banks: Tadaaki Nemoto, History of Bank ATM-from view point for service of depositors, (Nihon-Keizai-Hyoronsha 2008) at 18. However, a greater number of ATMs

in convenience stores do not include biometric authentication.

25 The data at the end of March 2010, <http://www.fsa.go.jp/news/21/ginkou/20100611-1.html>, March 2009, [<http://www.fsa.go.jp/news/20/ginkou/20090630-2/01.pdf>]; March 2008, <http://www.fsa.go.jp/news/19/ginkou/20080708-2.pdf>; March 2007, <http://www.fsa.go.jp/news/18/ginkou/20070620-2.pdf>.

26 This table was prepared by the author, based on the data published by the Japanese FSA. Some items are omitted.

than the initial setting.

Setting the limitation to the amount of withdrawal acts as a safeguard to eliminate losses caused by unauthorized withdrawals using forged or stolen cards. The depositors are made to become aware of and more fully control their capability of using money in a day. In this respect, the limits imposed by the banks have an educational effect, in that the depositor is made to take more care about the security of the cash card or other instruments issued by the bank. In addition, the limitation setting is an effective measure in reducing losses sustained by unauthorized withdrawals. However, there is a contradiction. The financial institutions diverge in determining the limit. This in turn inadvertently illustrates the rating they give to their own security system. It may be for this reason that some financial institutions do not have procedures to change the limitation of the biometric authentication card.

Practical problems

The passing of the Depositor Protection Act has caused a number of problems to financial institutions.²⁷ To obtain evidence to demonstrate whether a customer was negligent, it is necessary to preserve the video journal associated with the machine; to allocate responsibility in respect of the indemnity, it is necessary to provide the rules of inquiry about the practical issues relating to the withdrawal and transfer of money using forged or stolen cards among financial institutions, and it is necessary to establish the system of sharing information so that the position of the indemnity can be properly dealt with. The Japanese Bankers Association established and operates the information center for the card indemnity.²⁸ This center records the incidence of illegal withdrawals from depositors and indemnity, and provides information at the request of financial institutions. It promotes the payment of a quick indemnity to the depositor and prevents the payment of an illegal indemnity.

Concluding remarks

Modern banking transactions depend on the use of complex information communication technology, and the design of such systems is affected by whether the legislation emphasizes legal theory or technological solutions to solve the problems that arise because of the progress and changes in society. The policies that

the legislature adopt can be characterized into three types: the legislation, which depends on the standard technology at the time of the legislation; to focus on the legal theory, and at the same time to solve problems by improving technology; and to legislate in as technology neutral a manner as possible. Each policy has merits and demerits. The first can solve immediate problems but cannot respond to changes of technology. The second can retain consistency of legal theory but cannot be accomplished without the continuing cooperation of the industry and the government. The third is capable of responding to changes in technology, but meets difficulties when making a distinction between legal problems and technological problems, and the application of the law to specific cases because of the generality or abstractness of the provisions that are enacted.

The Depositor Protection Act appears to be technology neutral. The law only requires financial institutions to make a sincere effort to improve their security, but did not provide for the introduction of a specific form of technology. Hence it is difficult to solve problems around the unauthorized withdrawal by way of ATM only by the use of technological measures. The present biometric authentication card stores the information relating to the biometric measurement taken from the card holder in the IC chip. This is because the present system cannot verify the biometric information quickly. However, this system is not a preferable solution for security reasons, although a recent announcement indicates that the technology has developed further, permitting the verification of biometric information in a few seconds.²⁹ With this new system, the biometric measurements of the customer are only stored in the server of the financial institution. Such a product may promote the replacement of the present method of biometric authentication at ATMs.

However, ATMs in convenience stores do not include biometric authentication. Such ATMs tend to be near the customers home, and can be used 24 hours a day, all the year round. For this reason, these ATMs compete effectively with ATMs in banks. It is suggested that the banks should make efforts to reduce the cost of replacing ATMs with biometric authentication machines and provide a 24 hours service to customers through their ATMs.

Under the Depositor Protection Act, the Japanese

²⁷ Toru Mikami, *The enactment on the forged and stolen card and bank problems*, Kinyu-Houmu-Jijyo, No. 1768 at 4 (2006).

²⁸ <http://www.zenginkyo.or.jp/hosho/about/index.html>.

²⁹ *Asahi newspaper*, 2 June 2011.

financial institutions bear more responsibility for the unauthorized withdrawal by way of the ATM using stolen or forged cash card or other instruments.³⁰ It is important to keep the balance of interest between the depositor and the financial institution. It was planned to review the Depositor Protection Act in two years after enactment.³¹ However, a review has yet to be held. In any event, it may be worth examining the allocation of responsibility between the depositor and the financial institutions in respect of the biometric authentication system.

One of the effective measures to prevent illegal withdrawal by a stolen or forged cash card is to replace all ATMs by machines that respond to biometric authentication. The latest statistical data indicate that the difficulty in solving this problem is caused by the use of non-biometric authentication cash cards. Less than half of ATMs include a form of biometric authentication. The number of cases of illegal withdrawal by means of an ATM using a stolen or forged cash card still in a high, which is reflected in the amount that the financial institutions indemnify depositors.

Other than the technology, it is also necessary to recall that Japan has an aging society. A depositor can use a biometric authentication card, providing the biometric authentication technology has not been successfully undermined by thieves. People of advanced age may find it difficult to use such technology. Under the present biometric authentication card system, the

biometric authentication card for an agent authorized to make withdrawals for an elderly person is issued when both the depositor and the agent physically attend the bank together. It is natural for an aged depositor to continue using a non-biometric authentication IC cash card and a bank book, because they can then easily ask the agent to make withdrawals on their behalf. It means that the elderly depositor has the convenience of relying on their agent, but the risk of unauthorized withdrawal continues. Considering the population of elderly people in Japan,³² unrealistic changes should not be made to the system that ignores the inevitable use of the remaining old type cash cards and bank books. Financial institutions should not only concentrate on improving the security of the technology itself, but also to provide a service that remains familiar to elderly people.

© Hironao Kaneko, 2011

Hironao Kaneko, PhD in law (Hitotsubashi University) is an associate professor at Tokyo Institute of Technology, Graduate School of Decision Science and Technology. He teaches civil procedure, bankruptcy law and technology law. He is the co-author of several books, including *Jyoho-Network-no-Houritujitsum* (Legal Practices on Informational Network) (Daichi-Hoki 1999 and 2001).

³⁰ Toru Mikami, *Problems of the Depositor Protection Act*, Shindo & Uchida editors, *Continual Contract and Business Law Practices*, at 267 (Shoji-Houmu 2006).

³¹ Supplemental Provision, section 3.

³² In 2008 the ministry of FSA stated that the

amount of personal finance is 1,500 trillion Japanese yen, and 60 per cent belongs to aged people (it is noted that there is not a precise definition of "aged people" but it means over the age of 60 or 65.) (The press conference on 26 August 2008). According to the latest population

estimates (1 June 2011), the total population over sixty years is 4,018,000. People over 60 years old represent 31 per cent of the Japanese population: <http://www.stat.go.jp/english/data/jinsui/tsuki/index.htm>.

Appendix

The Depositor Protection Act 2005

(This is an unofficial translation by the author for the convenience of reference.)

Title: The law of protecting the depositors from improper withdrawal by ATM using a forged card or other instrument and a stolen card or other instrument (The Law No. 94 in 2005)

Section 1 (Purpose)

The purpose of the law is, considering that improper withdrawals by ATM using a forged card or other instrument or a stolen card or other instrument often occur, to provide for the special rules of the Civil Code concerning withdrawals by ATM using these cards or other instruments, and avoiding improper withdrawals by ATM using these cards or other instruments, to protect the depositors from improper withdrawal by ATM using these cards or other instruments, to ensure the reliability of bank deposits and savings and to contribute to the progress of the sound national economy and to provide stability for the nation in Japan.

Section 2 (Definition)

(1) In the law, the “financial institution” means as follows;

(i) a bank, (ii) a credit union, (iii) the Federation of Credit Union, (iv) a workers’ credit union, (v) the Federation of Credit Union, (vi) a credit cooperative association, (vii) the Federation of Credit Cooperative Association, (viii) an agricultural cooperative, (ix) the Federation of Agricultural Cooperative, (x) a fishermen’s cooperative, (xi) the Federation of Fishermen’s Cooperative, (xii) a marine product processing industry’s cooperative, (xiii) the Federation of Marine Product Processing Industry’s Cooperative, (xiv) the Norincuykin Bank (the Central Bank for Agriculture and Forest), (xv) the Shoko Chukin Bank (the Central Bank for Commercial and Industrial Association)

(2) The “depositor” means the individual who concludes a contract with a financial institution, (the contract of deposits and savings or including an agreement of loan).

(3) The “genuine card or other instrument” means a card for withdrawal or a bank book that has a function of loaning money issued to the depositor according to the contract of deposit and saving.

(4) The “forged card or other instrument” means the card or other instrument similar to a card that is not the genuine card or other instrument.

(5) the “stolen card or other instrument” means the genuine card or other instrument that has been stolen.

(6) The “withdrawal by ATM” means the withdrawal of deposits and savings by an automated telling machine in accordance with the contract between a financial institution and a depositor.

(7) The “loan by ATM” means borrowing money by way of an automated telling machine in accordance with the contract between a financial institution and a depositor, except for a loan that is not secured by deposits and savings.

Section 3 (Special rule of the Civil Code concerning the withdrawal and loan by ATM using a card or other instrument)

Article 478 of the Civil Code does not apply to withdrawals by ATM and loans by ATM using a card or an instrument similar to a card (hereinafter “ATM withdrawal and loan”). Excepting that the article of the Civil Code applies to the ATM withdrawal and loan by the genuine card or other instrument.

Section 4 (Effect of the ATM withdrawal and loan by a forged card or other instrument)

(1) The withdrawal by ATM using a forged card or other instrument is valid, if (i) the withdrawal is based on the intention of the depositor who concludes the contract of deposit and saving relating to the withdrawal by ATM, or (ii) on condition that the financial institution concluding the contract of deposit and savings acts in good faith and without negligence relating to the withdrawal by ATM, and the withdrawal is based on the gross negligence of the depositor.

(2) The depositor is responsible for the loan by ATM using a forged card or other instrument, if (i) the loan

is based on the intention of the depositor who concludes the contract of deposit and saving relating to the loan by ATM, or (ii) on condition that the financial institution concluding the contract of deposit and saving acts in good faith and without negligence in relation to the loan by ATM, and the loan is based on gross negligence of the depositor.

Section 5 (Indemnity of the amount of the ATM withdrawal and loan using a stolen card)

(1) The depositor can request the financial institution that he concludes the deposit and saving contract for an indemnity of the amount of the withdrawal by ATM using a stolen card or other instrument, where his/her genuine card or other instrument had been stolen and all conditions provided in the subdivisions are fulfilled.

(i) the depositor quickly gave notice to the financial institution after recognizing the fact of the theft of the genuine card or other instrument.

(ii) the depositor explained the situation of the theft adequately and without delay to the financial institution.

(iii) the depositor informed the financial institution that he/she had reported the theft to the investigation office or presented materials presuming the theft was defined by the Rule of the Cabinet Office.

(2) The financial institution that the depositor claims against for the indemnity provided by the provisions of subsection 1, should pay the amount of withdrawal by ATM to the requesting depositor (it is limited the amount of withdrawals by ATM after the standard day. Hereinafter “the amount of acceptable indemnity”), except where the financial institution proves the fact that the withdrawal by ATM is not improper by the use of a stolen card or other instrument, or the withdrawal is based on the intention of the depositor requesting the indemnity. Where the financial institution proves that the financial institution is bona fides and not negligent in relation to the improper withdrawal by ATM using a stolen card or other instrument, and that the withdrawal is based on the negligence (except for gross negligence) of the depositor, the financial institution should pay to the requesting depositor

three fourths of the amount of acceptable indemnity.

(3) In spite of the provision of subsection 2, the financial institution that is requested to pay the indemnity provided by subsection 1 does not need to pay to the depositor requesting the indemnity, where the financial institution proves the facts provided as follows.

(i) The financial institution is bona fides and without negligence relating to the improper withdrawal by ATM that is requested to indemnify when using a stolen card or other instrument, and (a) the withdrawal by ATM is based on the depositor’s gross negligence, (b) the withdrawal was carried out by the spouse, a relative within the second degree, relatives and person living with or the household of the depositor, or (c) the depositor makes a false statement to the financial institution about important things provided by subsection 1.

(ii) Theft of the card or other instrument is caused in or with the extreme confusion by a war or a riot.

(4) If the depositor recognizes that his/her genuine card or other instrument relating to the deposit and savings contract is stolen, and if all conditions provided by subsection 1 are fulfilled, the financial institution contracting the deposit and savings contract may not request the repayment of the loan by ATM (it is limited to the loan by ATM after the standard day. Hereinafter “loan at issue”), except where the financial institution proves that, concerning the loan by ATM using the stolen card or other instrument that the depositor asserts was responsible for the theft, the loan by ATM is not improper when using the stolen card or other instrument, or that the loan by ATM is based on the intention of the depositor. Where the financial institution proves that the financial institution is bona fides and without negligence concerning the improper nature of the withdrawal by ATM, and that the withdrawal is based on the negligence of the depositor (except for gross negligence), the financial institution may not request the depositor to repay three fourths of the amount of the loan at issue.

(5) The provision of the subsection 3 applies with necessary modification to subdivision 4. To modify, the phrase, “the financial institution that has been

requested by the depositor subject to subsection 1” is substituted by the phrase “subsection 4 means the financial institution provided by the subsection”, “does not need to indemnify the amount to the depositor requesting the indemnity” is substituted by the phrase “does not apply”, the phrase “the withdrawal by ATM using the stolen card that is requested to indemnify” is substituted by the phrase “money lending by ATM provided by subsection 4” and the phrase “the withdrawal by ATM” is substituted by the phrase “money lending by ATM”.

(6) The standard day provided in subsection 2 and 4 of this section means the day before thirty days of the notice provided in subsection 1(1), (if the depositor proves the term of special circumstances such as he/she could not know the theft took place within thirty days after the day of the theft provided by subsection 1 or 4 (if the day of the theft is not ascertained, the first day of the withdrawals by ATM or the loan by ATM using the stolen card. It is the same meaning in this subsection and in section 7), or as he/she could not give the notice because of inevitable circumstance, the term of the continuing special circumstances should be added to the thirty days) (and if the day was before the day of the theft, it means the day of the theft).

Section 6 (Adjustment of indemnity where the depositor is to receive damages)

(1) The financial institution requested to pay the indemnity may be exempt from the indemnity to the depositor who may request the indemnity provided by section 5(2) to the extent that the payment had been made to the claim of the depositor in whole or in part provided as follows. If the exception of section 5(2) applies, the financial institution may be exempt from the indemnity to the depositor to the extent of the excess, if the payment of the financial institution exceeds the amount of indemnity provided by the exception of section 5(2) deducted from the amount of acceptable indemnity.

- (i) the claim to the financial institution of the withdrawal of deposit and saving of the depositor relating to the withdrawal by ATM, if the withdrawal by ATM using a stolen card or other instrument is improper and may not have an effect of payment.
- (ii) claim of damages or repayment of undue profit

of the depositor to the person who was responsible for the withdrawal by ATM or other person, if the withdrawal by ATM using a stolen card or other instrument is improper but has an effect of payment.

(2) the depositor who receives the indemnity in accordance with section 5(2) may not request the payment for the claims provided subsection 1(i) of this section, to the extent that he/she had been indemnified.

(3) the financial institution paid the indemnity to the depositor according to section 5(2) may receive the claim corresponding to the depositor’s claim provided by section 5(1)(ii) to the extent of the amount that the institution indemnified.

Section 7 (Expiration of the indemnity claim)

The provision of section 5 does not apply if the notice provided by subsection 1(i) of the section was made over two years after the day of theft provided by subsection 1 or subsection 4 of the section.

Section 8 (Mandatory Provisions)

The agreement that violates sections 3 to 7 and is harsh to the depositor should be invalid.

Section 9 (Protection steps from the improper ATM withdrawal and loan using forged card or stolen card)

(1) To deter the improper withdrawal by ATM using a forged card or other instrument or stolen card or other instrument, the financial institution should ensure the withdrawal by ATM is only to the authorized person as soon as possible, by developing the authentication technology relating to the withdrawal by ATM, preventing the unintended disclosure of information, introducing information systems for early detection of unusual transactions and making other adequate responses and should provide information, promote and popularize the knowledge to depositors about these responses, and should introduce proper and necessary responses not to use an easily memorable PIN code.

(2) Where the financial institution introduces technological protection provided by subsection 1, the

financial institution should consider that these responses would not be extremely burdensome to depositors, and make an effort to establish the uniform standard and compatibility not to be inconvenient for depositors.

(3) The government and the local governments observe the status of the response provided by subsection 1, and make the financial institution introduce an adequate response, if it recognizes the necessity to improve the protection of depositors from the improper withdrawal by ATM using forged cards or other instruments or stolen cards or other instruments.

(4) The depositor will try to manage the card or other instrument properly and its PIN code, to avoid the improper withdrawal by ATM using a forged card or other instrument or stolen card or other instrument.

Section 10 (Recording and Preserving the Scene of the Transaction)

The financial institution should record the scene of the ATM withdrawal and loan as a video photograph or other recording media, and store these recording media, and should cooperate faithfully where they are requested by the depositor to provide information and other cooperation to find the fact that the withdrawal by ATM is accomplished by using a stolen card or other instrument or a forged card or other instrument.

Section 11 (Request of cooperation to authoritative administrative institution and depositor)

(1) The financial institution may request the necessary

cooperation of the authoritative administrative agencies relating to the improper ATM withdrawal and loan using a forged card or other instrument or a stolen card or other instrument.

(2) The financial institution may request any necessary cooperation from the depositor aggrieved by an ATM withdrawal and loan relating to the improper ATM withdrawal and loan using a forged card or other instrument or a stolen card or other instrument. The depositor should faithfully cooperate with the request.

(3) When the financial institution requests the cooperation of the depositor as provided by subsection 2 of this section, the financial institution should adequately consider the depositor's age, health condition and so on.

Supplementary provision

Section 1, Section 2 (Omitted)

Section 3

Considering to the circumstances around the ATM withdrawal and loan using a card or other instrument, such as quick development of information system and the technology of financial service, and practice of this law, from the view point to protect depositors further, at the time after enforcement of this law, this law is reviewed and if necessary the proper response may be made based on the review.

Translation © Hironao Kaneko, 2011