

Act on Protection of Depositors from Unauthorized ATM Withdrawals Using Counterfeit or Stolen Cards, etc.

(Act No. 94 of August 10, 2005)

(Purpose)

Article 1 The purpose of this Act is to protect depositors from unauthorized ATM withdrawals, etc. using counterfeit or stolen cards, etc. and to secure confidence in deposits, in view of the frequent occurrence of damages due to unauthorized ATM withdrawals using these cards, thereby contributing to the sound development of the national economy and the stability of the lives of the people. In order to attain this purpose, this Act establishes special provisions to the Civil Code (Act No. 89 of 1896) concerning ATM withdrawals using these cards and takes measures to prevent unauthorized ATM withdrawals using these cards.

(Definitions)

Article 2 (1) The term "financial institution" as used in this Act means the following:

- (i) a bank;
- (ii) a shinkin bank;
- (iii) a federation of shinkin banks;
- (iv) a labor bank;
- (v) the Rokinren Bank;
- (vi) a credit cooperative;
- (vii) a federation of credit cooperatives;
- (viii) an agricultural cooperative;
- (ix) a federation of agricultural cooperatives;
- (x) a fisheries cooperative;
- (xi) a federation of fisheries cooperatives;
- (xii) a fishery processing cooperative;
- (xiii) a federation of fishery processing cooperatives;
- (xiv) Norinchukin Bank; and
- (xv) the Shoko Chukin Bank, Ltd.

(2) The term "depositor" as used in this Act means an individual who concludes a deposit contract (meaning a contract for making and withdrawing deposits or a contract that covers matters concerning taking accompanying money loans; the same applies hereinafter) with a financial institution.

(3) The term "authentic card, etc." as used in this Act means a card or deposit

passbook for withdrawing deposits (including those also equipped with a function to take money loans; hereinafter referred to as a "card, etc.") that has been issued to a depositor based on a deposit contract.

- (4) The term "counterfeit card, etc." as used in this Act means a card, etc. other than an authentic card, etc., and anything similar thereto.
- (5) The term "stolen card, etc." as used in this Act means an authentic card, etc. that has been stolen.
- (6) The term "ATM withdrawal" as used in this Act means a withdrawal of deposits (including a withdrawal from a depositor's account for a transfer) via an automated teller machine (meaning a machine with a function to enable a user to withdraw deposits or take money loans based on a deposit contract; the same applies in the following paragraph) that is made based on a deposit contract concluded between a financial institution and a depositor.
- (7) The term "ATM loan" as used in this Act means a money loan (excluding a loan secured by assets other than deposits) via an automated teller machine that is taken based on a deposit contract concluded between a financial institution and a depositor.

(Special Provisions to the Civil Code Concerning ATM Withdrawals Using Cards)

Article 3 The provisions of Article 478 of the Civil Code do not apply to ATM withdrawals or ATM loans (hereinafter referred to as "ATM withdrawals, etc.") using cards, etc. or anything similar thereto; provided, however, that the provisions do apply to an ATM withdrawal, etc. using an authentic card, etc.

(Effect of ATM Withdrawals Using Counterfeit Cards)

- Article 4 (1) An ATM withdrawal using a counterfeit card, etc. is effective only if the ATM withdrawal was made intentionally by the depositor who concluded the deposit contract to which the ATM withdrawal pertains, or if the financial institution that concluded the deposit contract has acted in good faith and without negligence concerning the ATM withdrawal and the ATM withdrawal was made due to the depositor's gross negligence.
- (2) The liability for an ATM loan using a counterfeit card, etc. is borne by the depositor who concluded the deposit contract to which the ATM loan pertains, only if the ATM loan was taken intentionally by the depositor, or if the financial institution that concluded the deposit contract has acted in good faith and without negligence for the ATM loan and the ATM loan was made due to the depositor's gross negligence.

(Compensation for Amount Equivalent to Amount of Unauthorized ATM Withdrawal Using Stolen Cards)

Article 5 (1) If a depositor finds that an authentic card, etc. related to the depositor's deposit contract has been stolen, and the depositor falls under all of the following items, the depositor may request the financial institution with which the depositor concluded the deposit contract to compensate for an amount equivalent to the amount of any ATM withdrawal made using the stolen card, etc. involved in the theft:

- (i) the depositor has given notice to the financial institution of the theft promptly after finding that the authentic card, etc. was stolen;
 - (ii) the depositor has provided the financial institution, without delay upon its request, with an adequate explanation with regard to the circumstances concerning the theft, including the circumstances in which the theft was committed; and
 - (iii) the depositor has notified the financial institution that the depositor reported the theft to the investigating authorities or has presented to the financial institution any other fact specified by Cabinet Office Order as a fact that implies the committing of the theft.
- (2) The financial institution that receives a request for compensation pursuant to the provisions of the preceding paragraph must compensate the depositor who makes the request for compensation for an amount equivalent to the amount of the ATM withdrawal subject to the request for compensation (limited to an amount equivalent to the amount of the ATM withdrawal made on or after the reference date; hereinafter referred to as the "amount subject to compensation") unless it proves that the ATM withdrawal was not an unauthorized withdrawal made using a stolen card, etc. or that the ATM withdrawal was made intentionally by the depositor who makes the request for compensation; provided, however, that if the financial institution proves that it has acted in good faith and without negligence as to the fact that the ATM withdrawal was made without authorization using a stolen card, etc. and that the ATM withdrawal was made due to the depositor's negligence (excluding gross negligence), the amount for which the financial institution must compensate is to be three-fourths of the amount subject to compensation.
- (3) Notwithstanding the provisions of the preceding paragraph, the financial institution that receives a request for compensation pursuant to the provisions of paragraph (1) is not required to compensate the depositor who makes the request for compensation if the financial institution proves that the case falls under any of the following items:
- (i) the financial institution has acted in good faith and without negligence with respect to the fact that the ATM withdrawal subject to the request for compensation was made without authorization using a stolen card, etc., and the case falls under any of the following:
 - (a) the ATM withdrawal was made due to the depositor's gross negligence;

- (b) the ATM withdrawal was made by the depositor's spouse, a relative within the second degree of kinship, a cohabiting relative or any other person who lives with the depositor, or an employee of the depositor's household; or
 - (c) the depositor has provided a false explanation on important matters in an explanation to be provided to the financial institution as prescribed in paragraph (1), item (ii); or
 - (ii) the theft involving the stolen card, etc. was committed while taking advantage of or accompanying serious social disorder caused by a war, disturbance, etc.
- (4) If a depositor finds that an authentic card, etc. related to the depositor's deposit contract has been stolen, and the depositor falls under all of the items of paragraph (1), the financial institution with which the depositor concluded the deposit contract may not demand payment with regard to an ATM loan (limited to one taken on or after the reference date; hereinafter referred to as the "subject loan") taken using the stolen card, etc. involved in the theft, unless it proves that the ATM loan is not an unauthorized loan taken using a stolen card, etc. or that the ATM loan was taken intentionally by the depositor; provided, however, that if the financial institution proves that it has acted in good faith and without negligence with respect to the fact that the ATM loan was taken without authorization using a stolen card, etc. and that the ATM loan was taken due to the depositor's negligence (excluding gross negligence), the amount for which the financial institution may not demand payment is to be three-fourths of the amount of the subject loan.
- (5) Paragraph (3) applies mutatis mutandis to the case referred to in the preceding paragraph. In this case, the phrase "Notwithstanding the provisions of the preceding paragraph, the financial institution that receives a request for compensation pursuant to the provisions of paragraph (1) is not required to compensate the depositor who makes the request for compensation if the financial institution proves that the case falls under any of the following items:" in paragraph (3) is deemed to be replaced with "The provisions of paragraph (4) do not apply if the financial institution referred to in that paragraph proves that the case falls under any of the following items:", and the phrase "the ATM withdrawal subject to the request for compensation" in paragraph (3), item (i) is deemed to be replaced with "the ATM loan referred to in paragraph (4)", and the term "the ATM withdrawal" in the same item is deemed to be replaced with "the ATM loan".
- (6) The reference date prescribed in paragraphs (2) and (4) means a date that is 30 days prior to the date on which the notice prescribed in paragraph (1), item (i) was given (if the depositor proves that, within the period of 30 days from the date on which the theft referred to in that paragraph or paragraph (4) was

committed (the date on which the first unauthorized ATM withdrawal or ATM loan was made or taken using the stolen card, etc. involved in the theft if the date on which the theft was committed is unknown; hereinafter the same applies in this paragraph and Article 7), there was a period during which unavoidable, special circumstances made it impossible for the depositor to learn that the theft had been committed or otherwise made it impossible for the depositor to give the notice, 30 days plus the number of days during which the special circumstances continued to exist) (if the date is prior to the date on which the theft was committed, the reference date means the date on which the theft was committed).

(Adjustment When Damages Are Paid)

Article 6 (1) If any of the following claims are paid in whole or in part to a depositor who is deemed to be eligible to receive compensation based on the provisions of paragraph (2) of the preceding Article, the financial institution that receives a request for the compensation is exempt from the obligation to compensate the depositor up to the amount to be paid; provided, however, that if the provisions of the proviso to that paragraph apply, the financial institution is exempt from the obligation to compensate the depositor only if the amount to be paid exceeds the amount determined by deducting the amount for which the depositor is eligible to receive compensation pursuant to the provisions of the proviso to that paragraph from the amount subject to compensation, with the exemption being granted for up to the amount of the excess:

- (i) if the unauthorized ATM withdrawal using a stolen card, etc. does not have the effect of payment: the claim for refund of deposits held by the depositor against the financial institution with regard to the ATM withdrawal; or
 - (ii) if the unauthorized ATM withdrawal using a stolen card, etc. has the effect of payment: the claim for damages or for return of unjust enrichment held by the depositor against the person who received the ATM withdrawal or other third parties.
- (2) A depositor who receives compensation pursuant to the provisions of paragraph (2) of the preceding Article may not demand payment based on the claim set forth in item (i) of the preceding paragraph up to the amount of compensation received.
- (3) A financial institution that compensates a depositor pursuant to the provisions of paragraph (2) of the preceding Article acquires the claim set forth in paragraph (1), item (ii) held by the depositor up to the amount of compensation paid.

(Exclusion from Application)

Article 7 The provisions of Article 5 do not apply if the notice prescribed in paragraph (1), item (i) of that Article is given two years after the date on which the theft referred to in that paragraph or paragraph (4) of that Article was committed.

(Mandatory Provisions)

Article 8 A special provision that is contrary to the provisions of Article 3 to the provisions of the preceding Article and is disadvantageous to a depositor is void.

(Measures to Prevent Unauthorized ATM Withdrawals Using Counterfeit or Stolen Cards)

Article 9 (1) In order to prevent the occurrence of unauthorized ATM withdrawals, etc. using counterfeit or stolen cards, etc., financial institutions must make it possible to ensure that ATM withdrawals, etc. will be appropriately available for persons with legitimate authority by taking measures, as promptly as possible, including the development of technology for authentication concerning ATM withdrawals, etc. as well as the development of information systems for the prevention of information leaks and the early detection of abnormal transactions, and must take necessary measures including the provision of information, raising of awareness, and dissemination of knowledge with regard to those measures designed for depositors, and the implementation of appropriate measures to prevent the use of easily guessable personal identification numbers.

(2) When taking measures referred to in the preceding paragraph, financial institutions are to take care not to impose an excessive burden on depositors that could arise upon the implementation of these measures, and make efforts to avoid causing inconvenience for depositors by taking measures such as adopting uniform specifications and assuring compatibility.

(3) The state or each prefecture must ascertain the status of implementation of the measures referred to in paragraph (1), and if it finds it to be necessary, it must take necessary measures to make financial institutions take appropriate measures in order to enhance the protection, etc. of depositors from unauthorized ATM withdrawals, etc. using counterfeit or stolen cards, etc.

(4) Depositors are to make efforts to manage their cards, etc. and personal identification numbers therefor appropriately to prevent unauthorized ATM withdrawals, etc. using counterfeit or stolen cards, etc.

(Records of Transactions and Preservation Thereof)

Article 10 A financial institution is to record ATM withdrawals, etc. as they happen on recording media such as video tapes and photographs and to preserve these objects, and if it is requested by a depositor to provide

cooperation including the provision of necessary materials for confirming the facts concerning an ATM withdrawal, etc. using a counterfeit or stolen card, etc. related to the depositor's deposit contract, it is to provide cooperation sincerely as requested.

(Request for Cooperation from Relevant Administrative Organizations and Depositors)

Article 11 (1) A financial institution may request necessary cooperation from relevant administrative organizations in connection with an unauthorized ATM withdrawal, etc. using a counterfeit or stolen card, etc.

(2) A financial institution may request necessary cooperation including the provision of information from the depositor involved in an unauthorized ATM withdrawal, etc. using a counterfeit or stolen card, etc. in connection with the ATM withdrawal, etc., and the depositor is to provide cooperation sincerely as requested.

(3) When requesting the cooperation referred to in the preceding paragraph from a depositor, a financial institution is to give due consideration to the age, physical and mental conditions, and other matters of the depositor.