

Introduction



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Mr. Shiba possesses extensive knowledge and experience, particularly in FinTech/Web3, asset management, and a broad range of financial regulations. He provides practical and strategic advice to a wide range of clients, including domestic and international financial institutions and FinTech companies. He has authored numerous publications and delivered lectures and seminars on related topics.

| Education

2005 University of Tokyo (LL.B.)
2017 Cornell Law School (LL.M.)

| Professional experience

2011-14 Financial Services Agency of Japan
2017-18 MUFG Bank, Ltd., Singapore Branch
2021 Part-time Lecturer, Tohoku University Law School (Finance Law)

| Qualifications

Admitted to the bar in

- Japan (Dai-ichi Tokyo Bar Association) (2007)
- State of New York, USA (2018)

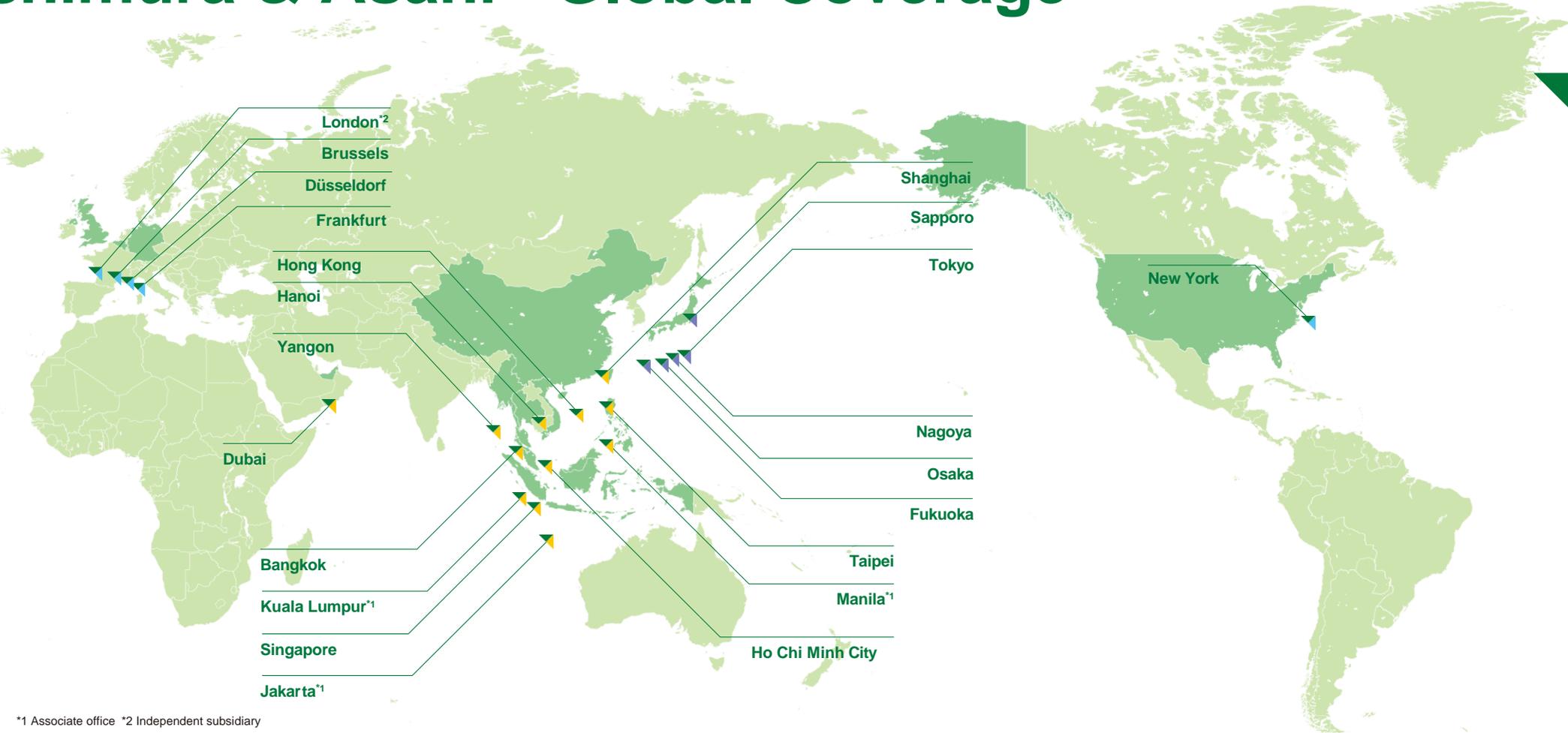
| Awards



Relevant Experience

- ▶ Extensive experience related to both the crypto and asset management sectors.
- ▶ Advising on, in particular:
 - ▷ crypto regulatory matters and transactions, including crypto/Web3 funds; and
 - ▷ regulatory matters related to primary and secondary trading of ETFs (both domestic and international).
- ▶ Has provided advice to various committees of the Japan Crypto-Asset Business Association (一般社団法人暗号資産ビジネス協会), a leading crypto industry organization in Japan (including on crypto ETFs).
- ▶ Participated in the Domestic Crypto Asset ETF Study Group (国内暗号資産ETF勉強会) and co-authored proposals for the establishment of crypto ETFs in Japan (“国内における暗号資産ETF等の組成等に向けた提言”), published on October 25, 2024.

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Professionals

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Locations

20%+
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* Including some Alliance and Associate offices

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| Dispute Resolution
and other relevant laws

| IP

| Information Law

| Corporate Crisis Management

| Competition Law / Antitrust Law
and other relevant laws

| Tax

| Labor

| Consumer Law

| International Trade /
Foreign Investment Screening

| Cross-Border Practice

| Wealth Management

| Public Interest Activities

| Public Policy

Crypto Regulation in Japan

- ▶ Regulator: Financial Services Agency (金融庁) (the “FSA”)
- ▶ Cryptocurrencies (e.g., BTC, ETH) are generally classified as “crypto-assets” (暗号資産), as defined in the Payment Services Act (資金決済に関する法律; the “PSA”).
 - ▷ Spot trading platforms and custodians are regulated as “crypto-asset exchange service providers” (暗号資産交換業者) under the PSA.
- ▶ Crypto-asset-based derivatives are classified as “derivative transactions” (デリバティブ取引), as defined in the Financial Instruments and Exchange Act (金融商品取引法; the “FIEA”).
 - ▷ Brokers and dealers in crypto derivatives are regulated as “financial instruments business operators” (金融商品取引業者) under the FIEA.
- ▶ Market abuse (excluding insider trading) in connection with crypto-asset spot and derivatives trading are prohibited under the FIEA.

ETFs under Japanese Law

- ▶ ETF units/shares are regulated as “securities” (有価証券) under the FIEA (金融商品取引法).
- ▶ Legal forms of ETFs created under Japanese law

| Legal form | Governing statute | Features |
|--|---|---|
| Investment trust (投資信託) | Act on Investment Trusts and Investment Corporations (the “AITIC”) (投資信託及び投資法人に関する法律 (「投信法」)) | Mainly invests in “specified assets” (特定資産), as defined in the AITIC (such as securities) |
| Trust with certificates of beneficial interest (受益証券発行信託 or “JS”) | Trust Act (信託法) | Retains profits ≤ 2.5% to avoid trust-level income taxation |

- ▶ The requirements for listing ETFs are set forth in the business regulations and listing rules of the relevant stock exchange.
 - ▷ Amendments to the business regulations require the FSA’s authorization.

Crypto ETFs are currently not permitted in Japan

- ▶ Most ETFs created under Japanese law take the form of an investment trust (投資信託) under the AITIC (投信法).
 - ▷ Under the AITIC, crypto-assets and crypto-asset-based derivatives are not included in the definition of “specified assets” (特定資産), which are the eligible asset classes for principal investment by investment trusts (投資信託).
 - ▷ Not possible to create any crypto spot ETFs or crypto futures ETFs in the form of an investment trust under the AITIC.
- ▶ Furthermore, in practice, it appears that the FSA prevents:
 - ▷ broker-dealers regulated in Japan from handling any forms of crypto ETFs; or
 - ▷ asset management firms regulated in Japan from creating any forms of crypto ETFs.

Major Anticipated Reforms in Crypto Regulation

- ▶ Both the FSA and the Liberal Democratic Party (自由民主党; the “LDP”) are considering a new regulatory framework for crypto-assets, treating them as investment instruments (rather than means of payment), similar to the securities regulation under the FIEA.
- ▶ Proposed measures include:
 - ▷ Introducing disclosure requirements on issuers
 - ▷ Enhancing regulatory requirements for crypto-asset exchange service providers (trading platforms and custodians)
 - ▷ Regulating crypto-asset investment advisory and fund management services
 - ▷ Prohibiting insider trading

Capital Gain Taxation on Individual Investors

- ▶ Crypto-assets trading by individual investors
 - ▷ Currently subject to comprehensive taxation at progressive rates depending on total income, up to 55.945%
- ▶ ETF trading by individual investors
 - ▷ Eligible for separate taxation at a flat rate of 20.315%
- ▶ Potential impact of introducing crypto ETFs in Japan
 - ▷ If crypto ETFs become tradable in Japan, the disparity in tax treatment may significantly disadvantage the crypto spot and derivatives markets.
 - ▷ The LDP is considering the introduction of separate taxation for crypto-assets trading, in parallel with major crypto regulatory reform.

Challenges for Crypto ETFs under Japanese Law

▶ AITIC

- ▷ Regulatory amendments are necessary to permit the establishment of investment trusts primarily investing in crypto-assets (or crypto-asset-based derivatives), including a revision to the definition of “specified assets.”
- ▷ Such amendments will also enable broker-dealers in Japan to handle foreign crypto ETFs.

▶ FIEA and other financial regulations

- ▷ Regulatory requirements applicable to ETF trustees and managers should be reviewed.

▶ Tax law

- ▷ Under the current tax regime, unrealized gains of a JS must be distributed to investors to avoid trust-level taxation. This requirement should be reconsidered to allow the JS structure to be used for crypto ETFs.

▶ Stock exchange rules

- ▷ Amendments to the business regulations and listing rules are necessary to permit the listing of crypto ETFs.