

# Electronically Recorded Monetary Claims



A new financial means  
for  
raising business funds



## What are electronically Recorded Monetary Claims?

"Electronically Recorded Monetary Claims" refer to monetary claims for which electronic records in the Registry prepared by an Electronic Monetary Claims Recording Institution are required for their accrual, assignment, etc. They are a new type of monetary claim, and are different from existing nominative claims, bills/notes receivable, etc.

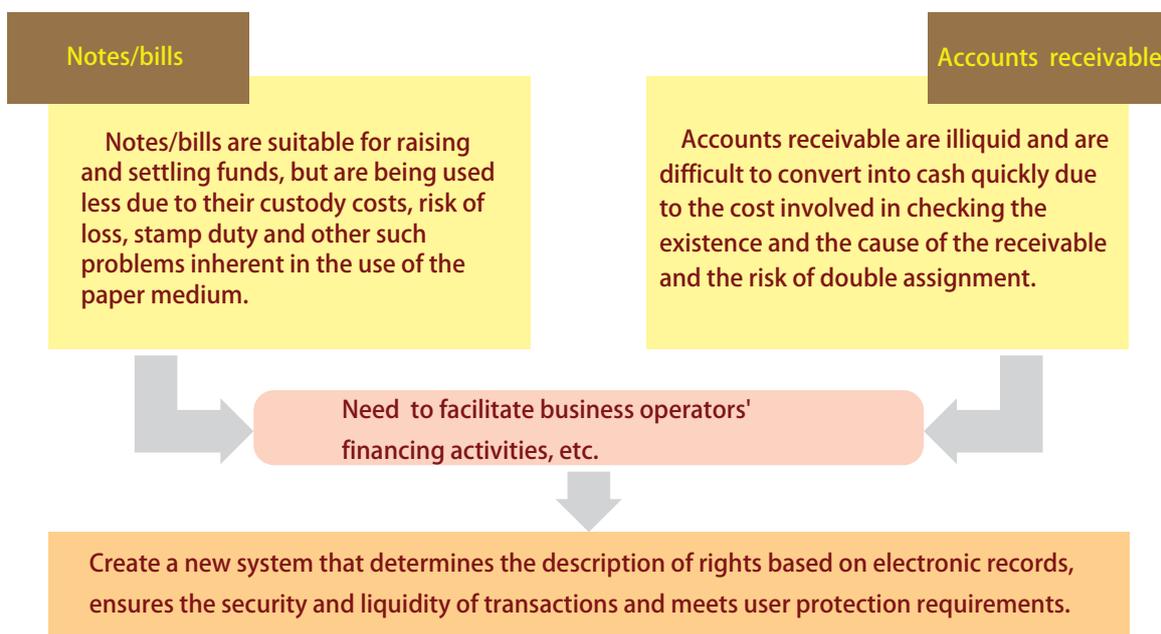
For the assignment of Electronically Recorded Monetary Claims, measures are taken to ensure the security of transactions—as exemplified by acquisitions by bona fide third parties and the effect of restrictions on the assertion of defense based on personal relationships—as there are in the case of bills/notes. Therefore, business operators are able to execute the accrual, assignment, etc. of Electronically Recorded Monetary Claims in a secure, easy and speedy manner by electronically recording the payment of debt arising from business-to-business (B to B) transactions, etc. with Electronic Monetary Claim Recording Institutions by PC or Fax, etc.

\* Electronically Recorded Monetary Claims are a new type of monetary claims created under the Electronically Recorded Monetary Claims Act (Act No.102 of 2007) for the purpose of facilitating business operators' financing activities. The Act came into force on December 1, 2008.

## Background to the Establishment of the Electronically Recorded Monetary Claims System

As a means of raising funds by utilizing monetary claims, a business operator can assign its accounts receivable and bills/notes drawn to another company that has a business relationship with the business operator or pledge them as collateral to such company. However, the problem with assigning accounts receivable or pledging them as collateral is that it costs time and money to confirm the existence and the identity of the owner of receivables to be assigned/collateralized, not to mention the risk of double assignment and other such risks. Likewise, the problem with assigning bills/notes or pledging them as collateral lies in the custody costs, risk of loss, etc. inherent in the bill/notes in paper format, which has resulted in the dramatic reduction in the use of bills/notes themselves recently, in line with the increasing application of information technology in the administrative procedures of companies.

The Electronically Recorded Monetary Claims system seeks to eliminate the aforementioned shortcomings of bills/notes and nominative claims and facilitate business operators' financing activities by creating a new type of monetary claim that is different from nominative claims (amount receivable, etc) and bills/notes receivable, and thereby ensure the security and liquidity of transactions.



## Benefits of Electronically Recorded Monetary Claims compared to Nominative Claims and Bills/Notes

### ■ Benefits of Electronically Recorded Monetary Claims compared to Nominative Claims

Under the Civil Code, nominative claims (accounts receivable, etc.) can be assigned as long as the parties simply agree to do so, meaning that there is a risk of double assignment. In contrast, Electronically Recorded Monetary Claims cannot be assigned solely by agreement between the parties, as they require Electronic Records for their accrual and assignment; therefore, the risk of double assignment is eliminated.

Furthermore, under the civil code, the assignment of a nominative claim must be asserted with respect to the obligor by notifying the obligor or obtaining the obligor's approval. However, neither notification nor approval is required for the assignment of Electronically Recorded Monetary Claims. This is because, even without notifying the obligor or obtaining the obligor's approval, the obligor of an Electronically Recorded Monetary Claim can check the obligee of such Claim by checking its electronic record (Monetary Claims Record), thanks to the existence and the ownership of Electronically Recorded Monetary Claims being electronically recorded.

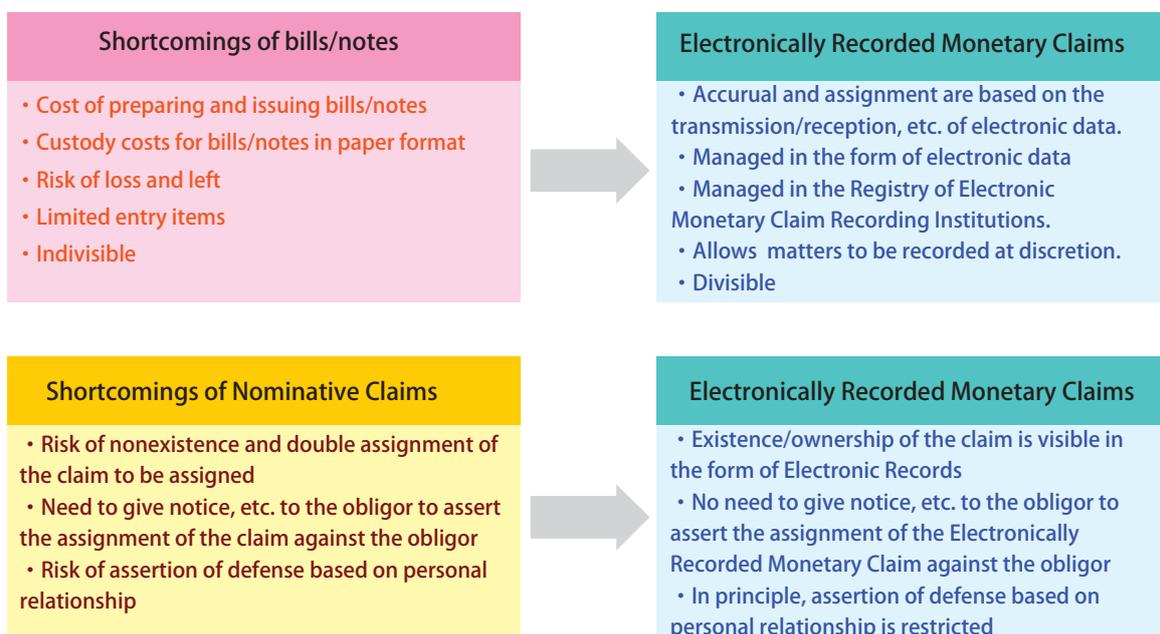
In the case of a nominative claim, the assignee of the claim may be refused payment on the grounds of such circumstances as the nullification of the sales agreement, etc. that gave rise to his/her rights, whereas in the case of an Electronically Recorded Monetary Claim, the obligor cannot refuse payment to the assignee on the grounds of such circumstances of the underlying obligation as a general rule, which is similar to the case of bills/notes (i.e., restriction on assertion of defense based on personal relationship).

### ■ Benefits of Electronically Recorded Monetary Claims compared to Bills/Notes

In the case of bills/notes, the description of the rights must be written on paper, which could eliminate the above-mentioned disadvantage of nominative claims. However, there is the cost of document preparation/issuance/custody and the risk of theft/loss, which are inherent problems in paper media, whereas, in the case of Electronically Recorded Monetary Claims, the description of the rights is recorded electronically.

Accordingly, Electronically Recorded Monetary Claims can eliminate or reduce the disadvantages which are pointed out for bills/notes.

Moreover, in contrast with bills/notes, which have limited entry items, Electronically Recorded Monetary Claims allow for a wide range of Record Matters by taking advantage of their characteristic of having records kept in the form of electronic data. Moreover, unlike bills/notes, which are indivisible for assignment, an Electronically Recorded Monetary Claim can be split and assigned in parts.



## Illustration of Transaction of Electronically Recorded Monetary Claims

### ■ Accrual of Electronically Recorded Monetary Claims: (1)

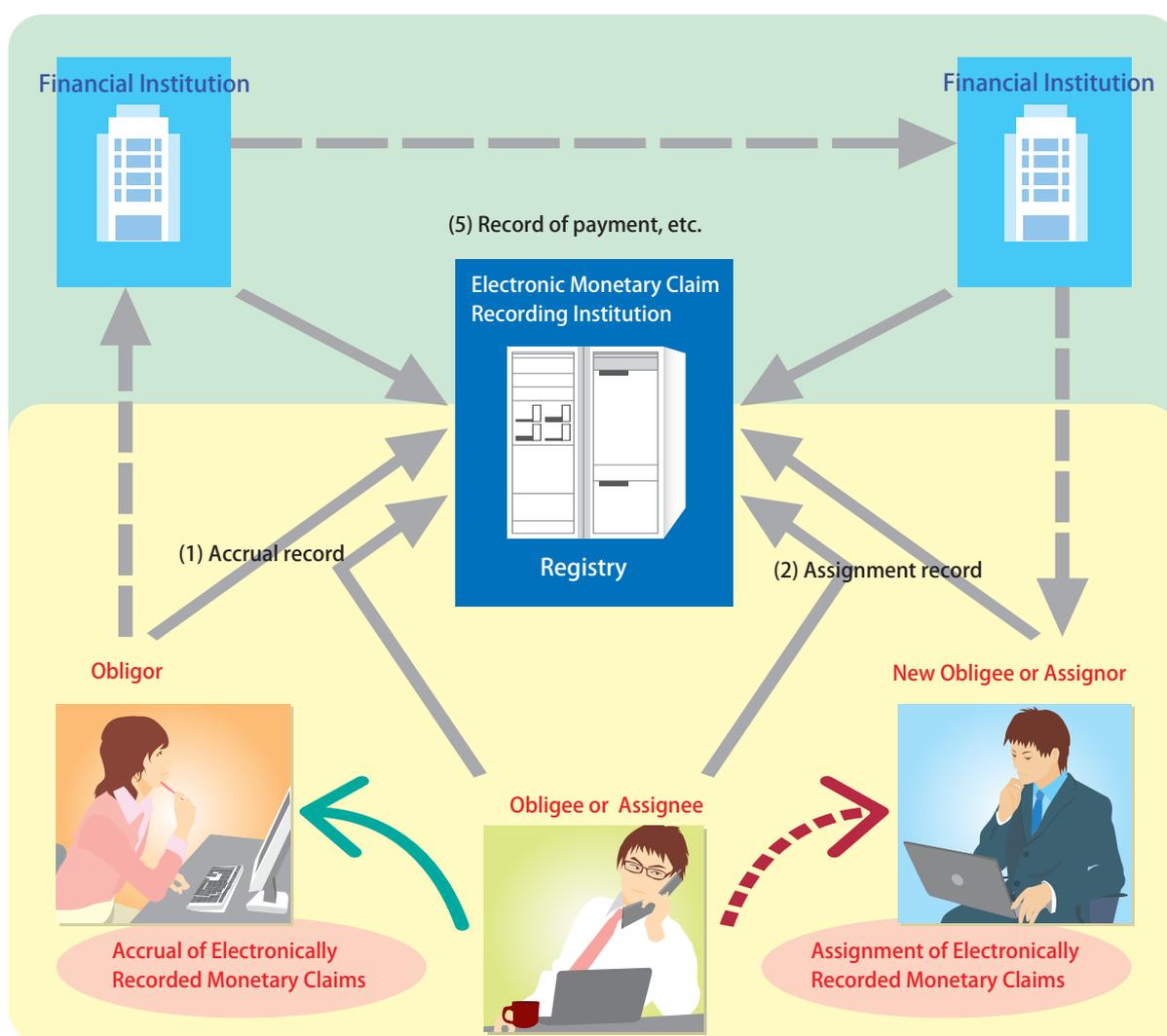
Both the obligee and the obligor make a request to the Electronic Monetary Claim Recording Institution for an accrual record, and in response, the Institution makes an accrual record in the Registry. This results in the accrual of an Electronically Recorded Monetary Claim.

### ■ Assignment of Electronically Recorded Monetary Claims: (2)

Both the obligee and the obligor make a request to the Electronic Monetary Claim Recording Institution for an assignment record, and in response, the Institution makes an assignment record in the Registry. This enables the Electronically Recorded Monetary Claim to be assigned.

### ■ Extinguishment of Electronically Recorded Monetary Claims: (3), (4) and (5)

If a payment has been made by remittance from the obligor's account to the obligee's account via a financial institution, the Electronically Recorded Monetary Claim will be extinguished. The Electronic Monetary Claim Recording Institution will make a record of payment, etc. without delay upon receiving a notice from the financial institution.\*



\* The record of payment, etc. of an Electronically Recorded Monetary Claim is made when a request for a record of payment, etc. is made by the obligee or an obligor who has obtained the obligee's approval. However, in cases where a specific agreement has been concluded, the Electronic Monetary Claim Recording Institution must make a record of payment, etc. without delay when it receives a notice on settlement information from a financial institution, even if there is no request for record of payment, etc. from the obligee or the obligor who has obtained the obligee's approval (i.e., synchronous management by Electronic Monetary Claim Recording Institutions).

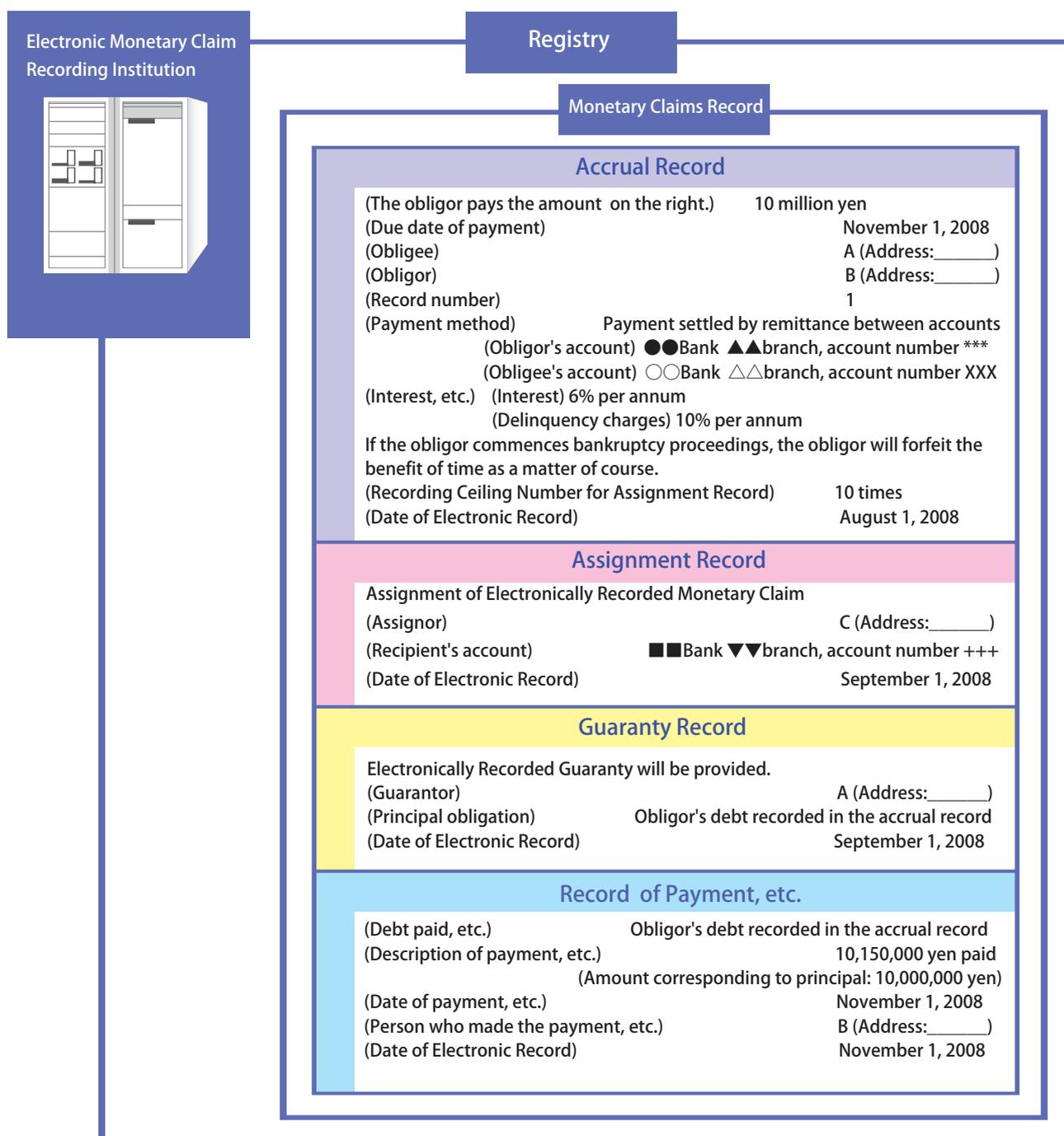
## Registry and Electronic Records

"Electronic Records" such as accrual records and assignment records are made by entering Record Matters in the Registry, which is an electronic book prepared by an Electronic Monetary Claim Recording Institution. "Monetary Claims Record" refers to electronic data in which such Electronic Records are collected and entered with respect to each Electronically Recorded Monetary Claim. "Registry" refers to an electronic book (recording media) in which Monetary Claims Records are entered.

### 【Example】

August 1, 2008 Accrual of A's Electronically Recorded Monetary Claim against B  
 September 1, 2008 Assignment of A's Electronically Recorded Monetary Claim to C and Electronically Recorded Guaranty  
 November 1, 2008 Payment of full amount of debt by remittance from B's deposit account to C's deposit account under a specific agreement

### 【Illustration of Electronic Records】

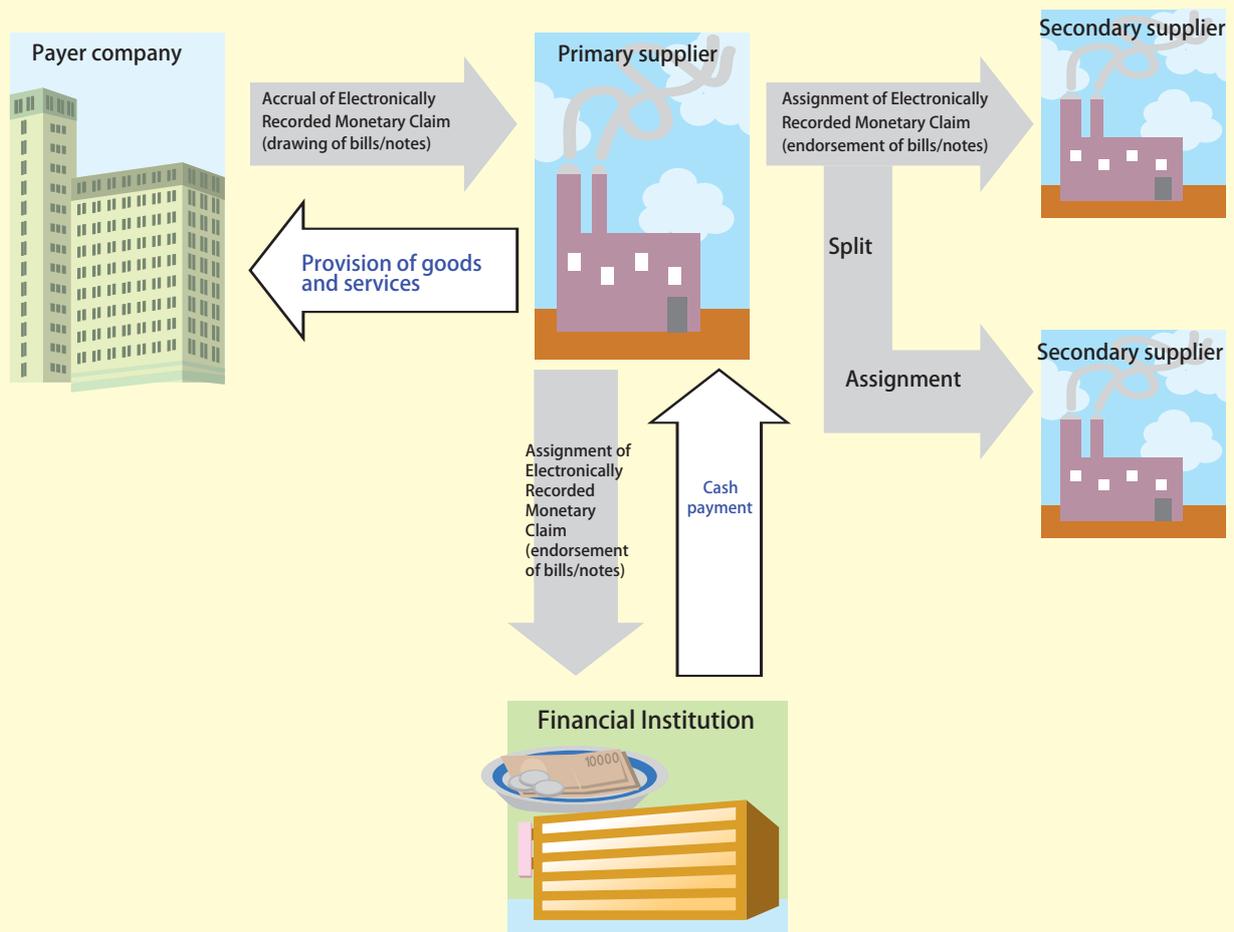


## Using Electronically Recorded Monetary Claims as Substitutes for Bills/Notes

Electronically Recorded Monetary Claims can fulfill the same functions as electronic bills/notes, as measures similar to those for bills/notes have been taken to ensure the security of transactions—as exemplified by acquisitions by bona fide third parties and the restriction on the assertion of defense based on personal relationships—unless there are records to the contrary.

For example, if Electronically Recorded Monetary Claims have been accrued instead of drawing bills/notes with respect to accounts receivable, a primary supplier can assign them to a financial institution to convert them into cash like discounted bills/notes, or assign them to a secondary supplier to make payments like bills/notes passed on, as the assignment records of such Electronically Recorded Monetary Claims are made by PC or Fax, etc. Furthermore, in contrast with indivisible bills/notes, Electronically Recorded Monetary Claims can be split by keeping a division record, meaning that they can be used for making payments to multiple secondary suppliers.

### Illustration of Electronic Records



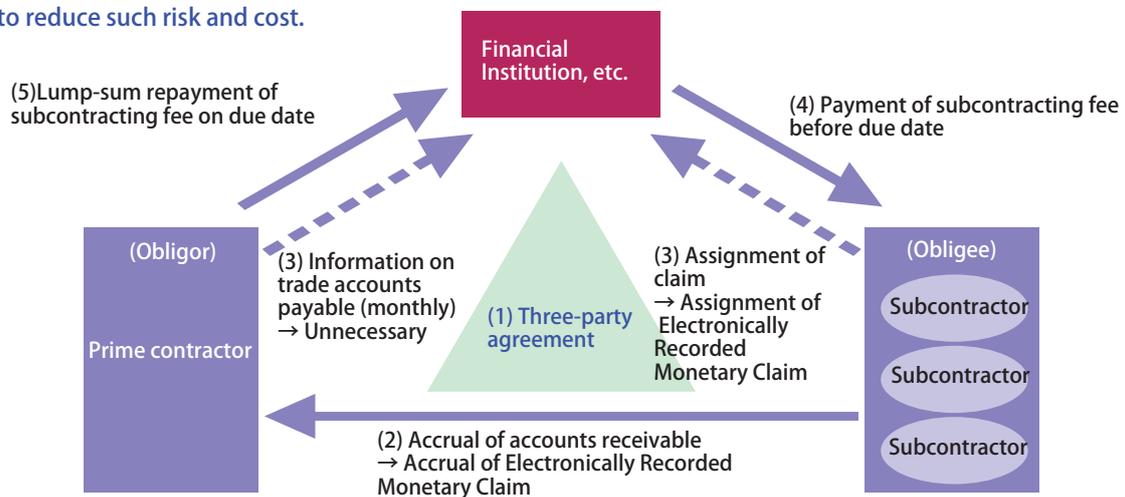
## Diverse Methods of Utilizing Electronically Recorded Monetary Claims

Unlike bills/notes, which have limited entry items, Electronically Recorded Monetary Claims allow for a wide range of Record Matters, in addition to being divisible. Due to such characteristics, they are expected to be used in various ways in business as exemplified below, other than being used as substitutes of bills/notes.

### ■ Utilization as a lump-sum settlement facility

Currently, as a bill/note-free product provided by banks, etc., there is an arrangement (lump-sum settlement facility) based on a three-party agreement among a prime contractor, subcontractor and financial institution, etc., in which the subcontractor assigns its accounts receivable to the financial institution, the prime contractor gives information on the purchase money to the financial institution, etc., and the financial institution, etc. pays the amount owed to each subcontractor on behalf of the prime contractor and then collectively demands the prime contractor to pay such amounts owed collectively by the due date.

As the lump-sum settlement facility is exposed to the risk of double assignment associated with the assignment of accounts receivable, not to mention the cost involved in fulfilling the requirement of the obligor to assert against the obligee, Electronically Recorded Monetary Claims are expected to be used as a lump-sum settlement facility to reduce such risk and cost.

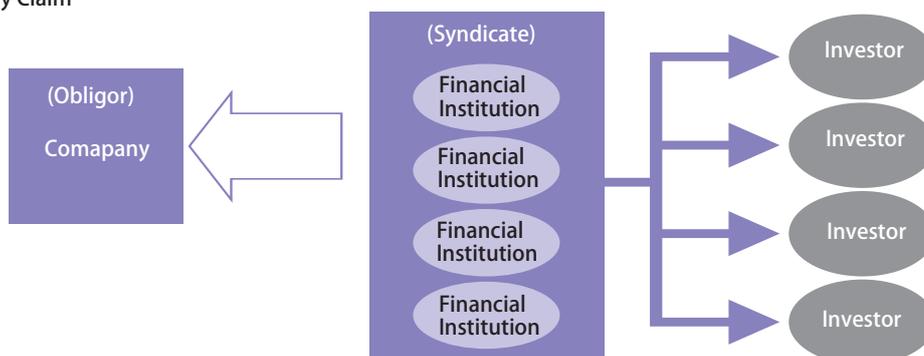


### ■ Utilization for securitization of syndicated loans

A syndicated loan is a means of financing by which multiple financial institutions work as a group and jointly provide loans under a single loan agreement to meet the demand for raising funds in large amounts. Electronically Recorded Monetary Claims are expected to be utilized for securitizing loan obligations.

(1) Joint financing  
→ Accrual of Electronically Recorded Monetary Claim

(2) Securitization of loan obligation  
→ Split and assignment of Electronically Recorded Monetary Claim



## Measures to Ensure Security of Transactions

The Electronically Recorded Monetary Claims Act takes the following legal measures to protect the security of transactions involving Electronically Recorded Monetary Claims and improve their liquidity, in order to make it easier to raise funds by making use of monetary claims.

### ■ Making the description and ownership of right visible

The description of rights to Electronically Recorded Monetary Claims must be set forth in the records in the Monetary Claims Record. Therefore, if you read the Monetary Claims Record, you will be able to find out what the Electronically Recorded Monetary Claim consists of and who the obligee is.

### ■ Protection of third parties regarding manifestation of intention

The Civil Code does not have any provisions to protect third parties in cases where the manifestation of intention is nullified by mental reservation or mistake or third parties after the rescission of the manifestation of intention by fraud or duress. The Electronically Recorded Monetary Claims Act protects such third parties provided they have acted in good faith and have not been grossly negligent.

### ■ Special provision regarding the responsibility of unauthorized agent

In cases where a person without authority of representation (unauthorized agent) requested Electronic Records, the Electronically Recorded Monetary Claims Act has stricter requirements for exemption than the Civil Code in that exemption of unauthorized agents is not permitted unless the other party has been grossly negligent.

### ■ Acquisition by bona fide third party and restriction on assertion of defense based on personal relationships

A person recorded in the Monetary Claims Record as a claim holder who does not have the right to have the Electronically Recorded Monetary Claim assigned to him/her but has such Claim assigned to him/her without such knowledge will be protected (i.e., acquisition by bona fide third party). Furthermore, in principle, the obligor cannot refuse payment on the grounds of the circumstances, etc. that gave rise to the person who has been assigned with the Electronically Recorded Monetary Claims (i.e., restriction on assertion of defense based on personal relationships).

### ■ Payment Discharge

An obligor who has made a payment to a person and does not have the right to receive such a payment but is recorded as the obligee of the Electronically Recorded Monetary Claim in the Monetary Claims Record will be discharged from the responsibility of making such payment as his/her payment will be deemed effective, unless he/she acted in bad faith or was grossly negligent.

### ■ Independence of Electronically Recorded Guaranty

The Electronically Recorded Guarantor will be required to assume the Electronically Recorded Guaranty Obligation even if a person who is recorded as the principal obligor does not assume the principal obligation\* (i.e., independence of Electronically Recorded Guaranty). If the Electronically Recorded Guarantor has made the payment, he/she will be granted the right to obtain reimbursement from other obligors uniquely under the Electronically Recorded Guarantee). If the Electronically Recorded Guarantor has made the payment, he/she will be granted the right to obtain reimbursement from other obligors uniquely under the Electronically Recorded Monetary Claims Act.

\*An example would be a case in which the principal obligor does not assume the obligation due to the nullity or rescission of the request for Electronic Records.

### ■ Responsibility of Electronic Monetary Claim Recording Institution

If a third party suffers damages as a result of the Electronic Monetary Claim Recording Institution falsifying the Electronic Records or making the Electronic Records based on a request by an unauthorized agent or an impersonator, the Electronic Monetary Claim Recording Institution will be liable for damages unless it proves that it was not negligent.

## Supervision of Electronic Monetary Claim Recording Institutions

As Electronic Monetary Claim Recording Institutions play a central role in the Electronically Recorded Monetary Claims system, the Electronically Recorded Monetary Claims Act seeks to ensure their fairness and impartiality by establishing provisions on the business, supervision, etc. of Electronic Monetary Claim Recording Institutions.

### ■ Designation of Electronic Monetary Claim Recording Institutions

Electronic Monetary Claim Recording Institutions must be designated by the competent minister to operate a Electronic Monetary Claims Recording Business.

The competent minister (Minister of Justice and Prime Minister (Commissioner of the Financial Services Agency)) must designate a stock company with the ability to execute Electronic Monetary Claims Recording Business in an appropriate and reliable manner in all aspects of the company's organization, including articles of incorporation, operational rules, financial basis, prospects for income and expenditure and staffing, as an operator of Electronic Monetary Claims Recording Business upon receiving the prescribed application.

\* Authority of Prime Minister (excluding the authority to designate Electronic Monetary Claims Recording Institutions, release a public notice regarding the designated company and cancel the designation) must be delegated to the Commissioner of the Financial Services Agency.

### ■ Prohibition of Subsidiary Business by Electronic Monetary Claim Recording Institutions

Electronic Monetary Claim Recording Institutions are prohibited from engaging in other businesses from the viewpoint of ensuring fairness and impartiality, and to eliminate the risk of failure of other businesses. However, Electronic Monetary Claim Recording Institutions can entrust part of their Electronic Monetary Claims Recording Business to banks and other entities with the approval of the competent minister for the purpose of improving user convenience, operational efficiency, etc.

### ■ Approval

In order for Electronic Monetary Claim Recording Institutions to execute business in an appropriate and reliable manner, Institutions must obtain the competent minister's approval for a reduction in the amount of stated capital, alteration of the Articles of Incorporation or the Operational Rules, discontinuation of the Electronic Monetary Claims Recording Business, reorganization (merger, etc.), dissolution, etc.

### ■ Report and Inspection

The competent minister can request the submission of reports and materials or conduct on-site inspections with respect to an Electronic Monetary Claim Recording Institution or a person that has been entrusted with the business by the Institution.

### ■ Order for Business Improvement

When the competent minister finds it necessary for the appropriate and reliable performance of Electronic Monetary Claims Recording Business, he/she can, to the extent necessary, order Electronic Monetary Claim Recording Institutions to take necessary measures for the improvement of business operations or conditions of assets.

### ■ Rescission of Designation, etc.

In cases where an Electronic Monetary Claim Recording Institution violates the Electronically Recorded Monetary Claims Act or an order for business improvement by the competent minister, the competent minister can reprimand the Electronic Monetary Claim Recording Institution by rescinding its designation, ordering the suspension of the whole or a part of its business, ordering the dismissal of its directors, etc.

### ■ Business Transfer Order

In cases where an Electronic Monetary Claim Recording Institution is reprimanded through the rescission of its designation or becomes bankrupt, etc., the competent minister can order the transfer of its Electronic Monetary Claims Recording Business to another stock company.

## Events leading up to the Enactment of the Electronically Recorded Monetary Claims

Since the announcement of "e-Japan Strategy II" on July 2, 2003, decisions have been made by the IT Strategic Headquarters to conduct studies on measures to promote the assignment of monetary claims by electronic means, in response to the progress of commercial transactions and financial transactions involving the use of electronic means in line with the increasing use of information technology in both the economy and society. In response, the Ministry of Justice (MOJ), the Financial Services Agency (FSA) and the Ministry of Economy, Trade and Industry (METI) conducted studies to develop a system of electronically-recorded claims, and in December 2005, compiled a report titled "Basic Concept of Electronic Claims," which clarified the viewpoints for creating a system of electronically-recorded claims and the legislative framework for such claims.

Subsequently, the Legislative Council (Subcommittee on the Electronic Claims Act) of MOJ investigated and deliberated the positioning of electronically-recorded claims under private law, while in the joint meeting between the Second Subcommittee of the Sectional Committee on Financial System Council and Working Group on Information Technology Innovations and the Financial System of the FSA, studies were conducted on Electronic Monetary Claim Recording Institutions. Based on the results of deliberations held in the Legislative Council and the joint meeting, MOJ and the FSA worked together on drafting a bill, and after obtaining Cabinet approval on March 13, 2007, submitted the bill for the Electronically Recorded Monetary Claims Act in the 166th session of the Diet on March 14, 2007. The Electronically Recorded Claims Act was legislated following Diet deliberations and was promulgated on June 27, 2007.

Subsequently, the Enforcement Order of the Electronically Recorded Monetary Claims Act (Cabinet Order No. 325 of 2008), the Enforcement Regulation of the Electronically Recorded Monetary Claims Act (Cabinet Office and Ministry of Justice Order No.4 of 2008), etc. were all promulgated, and all came into force on December 1, 2008.

### ■ Timeline of Studies on Electronically Recorded Monetary Claims

2003

Jul "e-Japan Strategy II" adopted by IT Strategic Headquarters

2004

Apr METI "Report by Financial System Subcommittee: Electronically-recorded Claims" (Industrial Structure Council and Corporate Finance Committee)

2005

Apr METI "Electronically-recorded Claims Scheme: Aimed at Building an Economic and Financial Infrastructure in an IT Society" (Working Group on Business Models utilizing Electronically-recorded Claims).

Jul FSA "Summary of Discussions on Electronic Receivable Legislation from a Financial System Perspective" (Working Group on Information Technology Innovations and Financial System, Second Subcommittee of the Sectional Committee of Financial System on the Financial System Council)

Dec MOJ "Summary of Issues regarding Electronic Receivables in Private Law" (Study Group on Electronic Receivables)  
MOJ, METI and FSA "Basic Concept of Electronic Claims"

2006

Feb Deliberations commence in the Subcommittee on the Electronic Claims Act of the Legislative Council

Mar METI "Electronic Claims Program" (Study Group on Infrastructure for Management/ Distribution of Electronic Claims)

Jun Deliberations commence in joint meeting between the Second Subcommittee of the Sectional Committee on Financial System of the Financial System Council and the Working Group on Information Technology Innovations and the Financial System of the FSA

Aug MOJ "Interim Draft for Electronically Recorded Monetary Claims Legislation" (Subcommittee on the Electronic Claims Act of the Legislative Council)

Dec FSA "Toward Enactment of the Electronically Registered Claims Act (tentative name): Focusing on Requirements for the Management Organizations of Electronically Registered Claims" (joint meeting between the Second Subcommittee of the Sectional Committee on Financial System of the Financial System Council and the Working Group on Information Technology Innovations and the Financial System of the FSA)

2007

Feb MOJ "Outline of the Private Law Aspect of the Legal System of Electronically Registered Claims" (Legislative Council)

METI "Interim Report by Study Group on Electronically Recorded Claims System" (Study Group on Electronically Recorded Claims System)

Mar Bill for Electronically Recorded Monetary Claims Act approved by Cabinet and submitted to Diet

May METI "Second Report by Study Group on Electronically Recorded Claims System" (Study Group on Electronically Recorded Claims System)

Jun Enactment and promulgation of Electronically Recorded Monetary Claims Act

2008

Oct Promulgation of Enforcement Order of Electronically Recorded Monetary Claims Act, Enforcement Regulation of Electronically Recorded Monetary Claims Act, Regulations for Amendment of Rules for Civil Execution and Rules for Civil Provisional Remedies

Dec Enforcement of Electronically Recorded Monetary Claims Act

## Q&A on Electronically Recorded Monetary Claims Act

### Q1 How is the underlying obligation affected by the accrual of an Electronically Recorded Monetary Claim?

An Electronically Recorded Monetary Claim is a claim that is separate from the underlying debt that gave rise to its accrual. Therefore, even if an Electronically Recorded Monetary Claim is accrued as a means of payment of the underlying debt, the underlying debt will NOT be extinguished as a matter of course.

### Q2 Is there adequate backup in the event of a security breach or accident in the Registry?

The competent minister will designate a company that can ensure adequate security including the backup of the Registry as an Electronic Monetary Claim Recording Institution, and inspect and supervise such Institution in an appropriate manner.

### Q3 What are Electronic Records?

Electronic Records include the "accrual record" by which Electronically Recorded Monetary Claims are accrued, "assignment record" for the assignment of Electronically Recorded Monetary Claims, "record of payment, etc." which clarifies that payment, etc. has been made, "guaranty record" for providing Electronically Recorded Guarantee, "pledge creation record" for pledging Electronically Recorded Monetary Claims as collateral, "alteration record" for altering the description of the rights, etc. (for example, the extension of the due date of payment, etc.), and "division record" for splitting Electronically Recorded Monetary Claims.

### Q4 What kind of operations are performed by Electronic Monetary Claim Recording Institutions?

Operations of Electronic Monetary Claim Recording Institutions include preparing the Registry, creating a Monetary Claims Record with respect to each Electronically Recorded Monetary Claim, making Electronic Records in response to requests, etc. from the parties, making record of payment, etc. with respect to payments made under specific agreements, and disclosing information provided upon receiving requests for Record Matters and Electronic Records to users.

### Q5 Are there any tax benefits for using Electronically Recorded Monetary Claims?

Unlike bills/notes, Electronically Recorded Monetary Claims are NOT subject to stamp duty. Furthermore, Electronically Recorded Monetary Claims are NOT subject to registration/license tax.

### Q6 Why weren't bills/notes converted into electronic format?

The Law on Bills of Exchange was enacted pursuant to the Geneva Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes. Therefore, it is difficult to dematerialize bills/notes unless the Convention is scrapped.

### Q7 Will Electronically Recorded Monetary Claims lead to the abolition of bills/notes?

Electronically Recorded Monetary Claims have been created as a new type of claims that are different from both bills/notes and nominative claims; they do NOT alter bills/notes or nominative claims in any way. Therefore, it is entirely up to the parties concerned whether or not to use Electronically Recorded Monetary Claims; the parties may continue using bills/notes and nominative claims as they did before instead of using Electronically Recorded Monetary Claims.

Research Office, Planning Division, Planning and Coordination Bureau,  
Financial Services Agency

Website: <http://www.fsa.go.jp>

Deputy Commissioner's Office, Civil Affairs Bureau, Ministry of Justice

Website: <http://www.moj.go.jp>