Global Financial Services Regulatory Guide - Japan

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The Financial Services Agency of Japan (JFSA) is the regulator responsible for the authorization and supervision of financial institutions, including banks, trust banks, trust companies, funds transfer/settlement-related service providers, insurers, securities firms, investment advisors, asset managers and funds. This responsibility includes seamless off-site and on-site monitoring by the Supervisory Bureau of the JFSA. The JFSA established (i) a dedicated fintech support desk in 2015 to provide a single point of contact for inquiries relating to fintech matters and (ii) a new Financial Markets Entry Office in 2021 to provide global asset managers which wish to enter the Japanese financial markets for the first time with pre-application consultation, registration and supervision services in English. In addition, the Ministry of Economy, Trade and Industry (METI) regulates credit card services in Japan. The JFSA and the METI also supervise financial firms for which they are responsible in terms of anti-money laundering, and they notify the National Public Safety Commission of the National Police Agency if any suspicious information is found.

The Bank of Japan (BOJ) is responsible for the macro supervision of the banking and financial services industries to maintain a safe and sound financial system. The BOJ is not a regulatory authority under the Banking Act, but it does conduct on-site examinations based on bilateral agreements with financial institutions with current accounts with the BOJ under the Bank of Japan Act. The BOJ also conducts examinations of banks’ overseas branches and off-site monitoring of such financial institutions. The BOJ’s on-site examinations and off-site monitoring cover both Japanese financial institutions and foreign banks in Japan.

There are also self-regulatory industry organizations (SROs) for each type of financial institution, such as the Japanese Bankers Association, the Japan Securities Dealers Association, the Japan Payment Service Association, and the Japan Virtual and Crypto Assets Exchange Association, which prepare guidelines to share best practices within the industry. These SRO guidelines are considered quasi-regulations in the industry.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Under the Japanese regulatory framework for financial services, each type of financial service has its own specified regulation, including the following:

**Banking Act** – This is the primary legislation for the banking industry and covers licensing, supervision, bank-holding companies, the scope of businesses for banks and bank-holding companies and their subsidiaries, foreign bank agency services, bank agency services, accounting, capital adequacy requirements, major shareholders, and branches of foreign banks.

**Deposit Insurance Act** – This covers Japan's deposit insurance system.

**Money Lending Business Act** (MLBA) – This regulates companies engaging in money-lending business (including agents or brokers for money lending) and covers licensing, supervision and consumer protection.

**Payment Services Act** (PSA) – This regulates companies that engage in: (i) funds transfer business; (ii) prepaid cards/instruments business; (iii) crypto-assets-related business, including crypto-asset exchanges, crypto-asset dealing and brokerage businesses, and crypto-asset custodians; and (iv) business related to transactions of certain stablecoins (defined as "electronic payment instruments"), including electronic payment instruments exchanges, electronic payment instruments dealing and brokerage businesses, and electronic payment instruments custodians. In principle, to engage in funds transfer business in Japan, a company must obtain a banking license. However, funds transfer business operators (FTBOs) registered under the PSA are exempted from this requirement under the Banking Act. The PSA covers licensing, supervision, security deposits, consumer protection, foreign funds transfer service providers, and clearing for funds transfers. The PSA was amended in 2020 to create: (i) new operational requirements for all FTBOs; and (ii) three categories of FTBOs, depending on the maximum amount of transferred funds per transaction, namely: (a) Type 1 FTBO without limit on the maximum transferrable amount per transaction, (b) Type 2 FTBO allowing a transfer of maximum JPY 1 million per transaction, and (c) Type 3 FTBO allowing a transfer of maximum JPY 50,000 per transaction.

**Financial Instruments and Exchange Act** (FIEA) – This comprehensive legislation regulates various securities and other financial investment products (including derivatives) and related business. Businesses covered by the FIEA include underwriting, securities dealing and brokerage, investment advice, investment management, asset management and funds management. The FIEA covers licensing, supervision, disclosure requirements, take-over bids, insider trading, business scope, major shareholders, foreign securities firms, accounting, exchanges, clearing, self-regulatory functions and customer protection.

**Act Concerning Provision of Financial Services and Improvement of Access to Financial Services** – This covers consumer protection in connection with the sale of financial products and registration system for financial service intermediaries.

**Trust Business Act** (TBA) – This regulates companies that engage in trust-related services (such as acting as a trustee and agents under a trust agreement). The TBA covers licensing, supervision, scope of business, accounting, consumer protection, major shareholders and foreign trust companies.

**Act Concerning Concurrent Business, etc., of Trust Business by Financial Institutions** – This regulates banks that engage in trust business concurrently with their banking business.

**Insurance Business Act** (IBA) – This regulates companies that provide insurance services, such as insurance companies and insurance brokers. The IBA covers licensing, supervision, scope of business, accounting, consumer protection, major shareholders, subsidiaries of insurance companies and foreign insurance companies.

**Installment Sales Act** (ISA) – This provides consumer protection in connection with credit cards and other types of installment sales. The ISA also establishes a registration system for credit card companies.

**Foreign Exchange and Trade Act** – This regulates foreign exchange transactions and other international transactions undertaken by financial services providers.

**Act for the Prevention of Transfer of Criminal Proceeds** – This is Japan’s comprehensive anti-money laundering legislation for financial institutions and provides: (i) statutory KYC procedures; and (ii) a reporting system for suspicious transactions.

There is also a large volume of secondary and delegated legislation as well as guidelines prepared by SROs.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Japan regulates a broad range of activities relating to financial services, including the following:

**Accepting deposits** - Typical banking activities involving the operation of current and deposit accounts

**Lending or brokerage of lending**- Lending to consumers and corporations

**Debt collection on behalf of third parties** - Generally handled by licensed lawyers, but as an exception may be handled by a debt collection service provider in a limited range of services by obtaining a license

**Providing payment and funds transfer related services** - Matters such as money remittance and the operation of payment accounts

**Providing electronic payment services**– (i) Instructing banks to transfer funds at the request of a client who holds a deposit account by way of using electronic data processing systems (payment initiation service providers); or (ii) providing account information obtained from banks to a client who holds a deposit account by way of using electronic data processing systems (account information service providers)

**Issuing prepaid cards or other prepaid payment instruments** - Electronic and non-electronic payment methods, either card-based or account-based

**Providing credit for installment sales** - Credit card services

**Conducting credit card-acquiring business**

**Providing crypto-asset exchange services** – Includes providing services as: (i) crypto-asset exchanges; (ii) crypto-asset dealing and brokerage businesses; and (iii) crypto-asset custodians

**Arranging or underwriting an initial coin offering**(ICO) - Activities to raise funds from the public using a digital token issued by a company or an individual, which may fall within the scope of the PSA (in case a token has a feature categorized as a funds transfer service, a prepaid payment instrument or a crypto-asset as mentioned above) and/or the FIEA depending on the structure and characteristics of the token

**Issuing stablecoins** – Allowed for licensed banks and FTBOs (since the issuance of stablecoins is considered as a funds transfer), and trust banks and trust companies (if issued in the form of beneficial interest in a trust)

**Providing business related to transactions of electronic payment instruments** – Includes electronic payment instruments exchanges, electronic payment instruments dealing and brokerage businesses, and electronic payment instruments custodians

**Underwriting or handling the issue of securities**

**Trading in securities and other financial instruments (including derivatives) as a principal, agent, intermediary or broker**

**Providing advice on financial investments** – The provision of advice on the value of securities and/or investment decisions

**Investment management** – Managing assets with securities investments or derivatives on behalf of another person

**Establishing, operating or distributing funds (including collective investment schemes)**

**Operating an exchange or proprietary trading system**

**Providing custody services (safeguarding and administration of investments)**

**Operating an insurance or insurance brokerage business**

**Providing trustee services, or agency or brokerage services for trust agreements/beneficial interests**

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

**Overview of regime**

Japanese financial regulations apply on a territorial basis (i.e., whether or not the activity is carried out within Japan) but to a certain extent, the effect in Japan of any relevant activity outside Japan is taken into consideration. Japanese licensing requirements apply to a firm’s activities undertaken directly (by its staff) or indirectly (through agents) within Japan or into Japan (i.e. The issue of whether marketing or solicitation is made in Japan by a foreign firm is an important factor in determining whether Japanese laws will apply. However, even when financial services are provided by a foreign firm at the client’s request (i.e., on a reverse solicitation basis), the regulations could apply to the foreign firm and the service.

There is little guidance as regards the application of licensing requirements to cross-border business into Japan. Generally, if a person outside Japan deals with a client or a counterparty located in Japan, those activities would be subject to Japanese licensing requirements.

**Specific considerations and rules for cross-border application**

Receiving deposits

There is no clear rule as to whether a foreign bank without a Japanese banking license may receive deposits from Japanese residents. However, it is clear that when a foreign bank engages in marketing or solicitation in Japan (directly or indirectly through agents or brokers) to receive deposits, it must obtain a Japanese banking license. However, if a foreign bank has a licensed branch in Japan and that branch is licensed to provide foreign bank agency services, the foreign bank may receive deposits via the foreign bank agent. A foreign bank may also engage in some non-core banking activities that are delegated by a licensed bank, such as acting as a calculation agent, subject to detailed relevant guidelines in Japan as to the outsourcing of banking services.

Lending

There is no clear rule as to whether a foreign lender without a Japanese license (either a banking license or a money-lending business license under the MLBA) may lend to residents of Japan. However, when a foreign lender engages in marketing or solicitation in Japan (directly or indirectly through agents or brokers) for lending, it must obtain a Japanese banking license. It is not clear whether the relevant regulations apply to money lending by a foreign lender to residents of Japan when the transaction takes place solely at the borrower’s request (i.e., reverse solicitation basis).

Funds transfer services, issuance of prepaid payment instruments, crypto-asset exchange services and business related to transactions of electronic payment instruments

There is no clear provision in the Banking Act and the PSA covering these services provided to residents of Japan by a foreign firm. However, when a foreign firm engages in marketing or solicitation in Japan (directly or indirectly through agents or brokers) for fund transfers, it will trigger the licensing requirements under the Banking Act and/or the PSA.

Furthermore, the PSA clearly states that a foreign service provider providing either of these services may not solicit residents of Japan without registering under the PSA.

Underwriting or sales agency/brokerage of securities and securities-related derivatives

A foreign securities company is not allowed to engage in business such as underwriting or sales agency/brokerage of securities and securities-related derivatives (“**Securities-Related Business**”) with persons located in Japan, unless it is registered under the FIEA.

However, as an exemption to this requirement, an unregistered foreign securities company with no business base in Japan is allowed to engage in Securities-Related Business with persons in Japan if they either (i) take orders without solicitation or (ii) take orders through an agency or brokerage service provided by a person licensed under the FIEA (e.g., a traditional securities company). Furthermore, a foreign securities company may trade financial instruments on exchanges in Japan if authorized under Article 60 of the FIEA.

Cross-border transactions using the internet

A foreign securities company that posts advertisements on its website regarding Securities-Related Business will be deemed to be engaging in solicitation in Japan unless it takes reasonable measures, including the following steps, to prevent investors in Japan from receiving services of Securities-Related Business from the foreign securities company:

Disclaimer

The website must include a disclaimer stating that the advertised service is not targeted at investors in Japan. In judging whether an adequate disclaimer has been implemented, attention must be paid to the following points:

No computer operation other than viewing the advertisement should be necessary for reading and understanding the disclaimer.

The disclaimer must be written in a language reasonably likely to be readable and understandable by investors in Japan who access the website.

Measures to prevent transactions

Measures to prevent transactions regarding Securities-Related Business must be in place. In judging whether adequate measures are in place, attention must be paid to the following points:

When conducting transactions, the foreign securities company checks the location of the investors by requiring them to provide information as to their residence, location, mailing address, email address, payment method and other items.

Care must be taken to avoid taking orders from investors in cases where there are reasonable grounds to believe that the orders relate to Securities-Related Business involving investors in Japan.

Care must be taken to avoid inducing investors in Japan to receive services of Securities-Related Business by, for example, refraining from establishing a call center targeted at customers in Japan and establishing links to web pages targeted at investors in Japan.

These measures are merely examples, so if other measures equivalent or more effective than these have been implemented, the posting of advertisements on the internet by foreign securities companies should not constitute solicitation in Japan.

**Investment advice and investment management**

In principle, a foreign firm providing investment advice or investment management services may not offer those services to residents of Japan without having the relevant license under the FIEA. However, certain exemptions to these license requirements may be available to foreign fund managers, including (i) a full delegation scheme to use a licensed entity in Japan; (ii) the so-called Article 63 exemption if investors meet certain qualification thresholds; (iii) off-shore fund exemptions where less than one-third of the total assets are acquired by a limited number of professional investors that reside in Japan; or (iv) less than 50% of total managed assets consist of securities and derivatives.

**Insurance**

ISA

Trust-related business

The Trust Business Act/TBA has a license and registration framework for foreign trust business operators. However, the TBA applies only where there is a Japan nexus; it does not relate to services that are received and provided wholly outside of Japan.

Issuance of credit cards

The Installment Sales Act /ISA does not have any specific provisions covering foreign firms issuing credit cards to residents of Japan. However, it is generally understood that such foreign card issuers should be registered through a business office in Japan.

Credit card-acquiring business

In 2018, the ISA was amended to regulate credit card-acquiring businesses, under which acquirers (including foreign acquirers) are obliged to register with the relevant regulatory authority in Japan (i.e., METI).

Issuance of prepaid cards (including any other prepaid-type payment methods)

The Payment Services Act / PSA clearly states that a foreign prepaid instrument issuer may not solicit residents of Japan to purchase prepaid instruments issued outside Japan.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

In order to obtain a license, authorization or registration in Japan, the applicant must satisfy the applicable requirements for the particular regulated activities under the relevant regulations. Detailed requirements differ depending on the specific license, authorization or registration. Broadly, the following factors should be examined:

The type of applicant – In most cases, the applicant must be a corporation.

Location of offices – In most cases, the applicant must be located in Japan. A foreign entity must have a presence in Japan and at least one person who is domiciled in Japan as its representative. Further, the requirement in relation to the “appropriate resources,” as explained below, means that certain key senior management personnel may be required to be residents of Japan, and a proper administrative center will also need to be located in Japan.

Capital and net asset requirement – In most cases, the applicant must have stated capital and net assets exceeding the specified minimum amount.

Appropriate resources – The applicant must satisfy the regulator that it has adequate resources to carry out the relevant regulated activities. Resources include financial as well as human resources (including management with the required skills) and infrastructure. With respect to human resources, the applicant must deploy personnel who have the knowledge and experience to carry out the regulated business appropriately, fairly and efficiently, and who have sufficient social credibility.

Compliance – The applicant must have a system in place to ensure its compliance with applicable laws and its internal rules.

No association with anti-social forces – Neither the applicant nor its senior management should be associated with any anti-social forces (i.e., organized crime (boryokudan) or any other individual or organization whose activities purposefully disrupt normal, legal and moral business and social conduct, including any group companies of such organization, and any organization or individual that has a strong relationship therewith).

Record of senior management – Certain members of the applicant's senior management are required to: (i) have legal capacity; and (ii) not have been or be bankrupt. The criminal and administrative records of senior management will be examined.

Major shareholders – In most cases, the applicant’s major shareholders must be suited to the regulated business.

Other businesses – The applicant’s businesses — other than the regulated business for which the applicant will obtain the license, authorization or registration — must not be contrary to public interest and must not interfere with the proper and reliable operations of the regulated business.

Business model and plan – The regulators will examine the applicant’s business model as well as the economic aspects of the business. Regard will be given to matters such as the impact of the model on consumers and on the stability of the Japanese financial system.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

An applicant applying for a license, authorization or registration in Japan must undergo a formal process. This involves the completion of required application forms and the submission of supporting information.

In relation to timing, each regulation has a specified standard processing period (depending on the case, typically between two weeks and four months).  However, this period does not include the time necessary for pre-application consultation with the regulator, amendment of the application to reflect the regulator’s concerns, response to the regulator’s questions, and/or the submission of additional material for further explanation.

In practice, it often takes six months to one-and-a-half years to obtain a financial services business license after the start of the pre-application consultation process.

Furthermore, for certain licenses, the applicable laws provide for a formal preliminary examination procedure that an applicant may use, on a voluntary basis, to assess whether it can obtain the license.

The particular forms and annexes must be completed for submission to the regulator, depending on the applicable laws and the type of regulated activity to be conducted. However, broadly speaking, the following items should be included:

The application form containing basic information regarding the applicant and its business

The articles of incorporation and other constitutional documents of the applicant

An explanation of its corporate governance features

All relevant internal rules

Financial statements

Résumés of the members of senior management (including their respective track records and capabilities)

Details of major shareholders and corporate groups

Certain undertakings, and representations and warranties

The above procedures apply both to traditional banking and financial services and to innovative services such as fintech. In case it is not clear whether or which license is required, the Fintech Support Desk of the JFSA mentioned in Question & Answer 1 can be a contact point for inquiries relating to fintech matters.

Furthermore, Japan has introduced a "Regulatory Sandbox" system for businesses to experiment with their new business models that use cutting-edge technologies under the supervision and support of regulators. This system allows businesses to demonstrate new technologies even when it is difficult to start such a business under the existing law. As of the end of December 2023, 31 projects have been approved under the system, including several fintech cases.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Japan is one of five countries participating in the Asia Region Funds Passport (ARFP), a cross-border funds passporting program that enables cross-border offerings of managed funds to retail investors, and at the same time maintains appropriate investor protections. The other countries currently participating in the ARFP are Thailand, Australia, New Zealand and South Korea.

# 8. Authors and contact information

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