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in 28 jurisdictions worldwide

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Contributing editor:
Craig Wasserman
Wachtell, Lipton, Rosen & Katz

Business development manager
Joseph Samuel

Marketing managers
Alan Lee
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Robyn Hetherington
Dan White
Tamzin Mahmoud
Ellie Notley

Subscriptions manager
Nadine Radcliffe
Subscriptions@GettingTheDealThrough.com

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Editor-in-chief
Callum Campbell

Publisher
Richard Davey

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87 Lancaster Road
London, W11 1QQ, UK
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Fax: +44 20 7229 6910

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Law Business Research

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Japan

Tatsuo Tezuka, Taku Ishizu, Masao Morishita and Susumu Tanizawa

Nishimura & Asahi

Regulatory framework

1 What are the principal governmental and regulatory policies that govern the banking sector?

The banking sector has the following distinctive features: one bank's failure may spread to other banks and other industries, the main creditors of a bank are its depositors, and the banking sector supplies funds deposited by depositors to various industries as a financial intermediary.

Given these features, the principles that shape governmental and regulatory policies are to ensure the safety and soundness of the banking sector in order to maintain its credibility, protect depositors and facilitate the smooth supply of funds, whereby the banking sector contributes to the sound development of the overall national economy.

2 Please summarise the primary statutes and regulations that govern the banking industry.

The Bank Law of Japan (Law No. 59 of 1981)

The Bank Law and the relevant regulations promulgated thereunder are the main statute and regulations that govern the banking industry. The Bank Law includes entry regulations, activities restrictions, limitations on investments by banks, lending limits, the scope of subsidiaries, transactions between banks and their affiliates, accounting, capital adequacy requirements, reorganisation, bank holding company regulations, and provides for general supervision, examination and enforcement.

The Deposit Insurance Law of Japan (Law No. 34 of 1971)

The Deposit Insurance Law governs the deposit insurance system and the treatment of failed banks.

The Law Concerning Concurrent Business, etc, of Trust Business by Financial Institutions of Japan (Law No. 43 of 1943)

The Law Concerning Concurrent Business, etc, of Trust Business by Financial Institutions applies to banks that conduct trust activities.

The Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948)

The Financial Instruments and Exchange Law applies to banks that conduct securities activities.

The Insurance Business Law of Japan (Law No. 105 of 1995)

The Insurance Business Law of Japan applies to banks that conduct insurance agency activities.

The Foreign Exchange and Trade Law of Japan (Law No. 228 of 1949)

The Foreign Exchange and Trade Law applies to banks that conduct foreign exchange transactions.

3 Which regulatory authorities are primarily responsible for overseeing banks?

The prime minister of Japan has the authority to supervise banks, and most of the prime minister's authority is delegated to the commissioner of the Financial Services Agency of Japan (the FSA) under the Bank Law. Therefore, the FSA is primarily responsible for overseeing banks. The FSA publishes its Supervisory Policies for Major Banks and Supervisory Policies for Regional Financial Institutions (together, the Supervisory Policies) and the related examination manuals (collectively, the Examination Manuals) in order to ensure fairness and transparency in supervision. Thus, the FSA oversees banks in accordance with the Bank Law, Supervisory Policies and Examination Manuals.

4 Describe the extent to which deposits are insured by the government.

One of the important purposes of the Deposit Insurance Law is to protect depositors of banks that are headquartered in Japan in case of a bank failure. The Deposit Insurance Corporation of Japan (the DIC) was established in 1971 to administer the deposit insurance system. The full amount of non-interest-bearing demand deposits that are used by depositors primarily for payment and settlement functions are covered by the DIC. Other types of deposits (excluding foreign currency deposits, negotiable certificates of deposits and other types of deposits prescribed by the regulations under the Deposit Insurance Law) are also covered by the DIC up to a principal amount of ¥10 million, together with any interest accrued thereon, per bank.

5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose?

The Bank Law regulates transactions between banks and their affiliates. Under the Bank Law, a bank is generally prohibited from engaging in a transaction with its affiliates (which are defined under the Bank Law as specified related persons) on terms unfavourable to the bank compared to a similar transaction with an unaffiliated company that has a similar type of business, scale of business and credit standing as the affiliate. In other words, banks must deal with an affiliate on an arm's-length basis. The arm's-length rule also applies to a bank's transaction with a customer of its affiliate.

The definition of a specified related person includes a wide range of persons, including, without limitation:

(i) a subsidiary or affiliate of the bank;
(ii) a major shareholder of a bank (as explained in question 20);
(iii) a person or an entity who holds an interest of a bank exceeding 50 per cent of the bank's voting rights (including a bank holding company (as explained in question 20)); and
(iv) a subsidiary and an affiliate of (iii) above.

6 What are the principal regulatory challenges facing the banking industry?

The FSA published its 'Plan for Strengthening the Competitiveness of Financial and Capital Markets of Japan' at the end of 2007. This plan proposed the following measures to strengthen the Japanese market's competitiveness:
(i) creating vibrant markets that investors can have confidence in;
(ii) creating a business environment that vitalises the financial services industry and promotes competition of the financial services industry;
(iii) improving the regulatory regime (ie, achieving better regulation as described in question 8); and
(iv) improving the environment surrounding the markets.

In order to achieve these measures (particularly, (iii) above), regulations regarding firewalls between financial institutions, including banks, were revised under a new regulatory framework that became effective in June 2009. Among other things, the ban on directors and employees being concurrently employed by a bank, securities firm and insurance company of one financial group was lifted, and the restrictions on the sharing of undisclosed customer information among financial group companies was relaxed. At the same time, in order to protect the interests of customers, financial institutions (including banks) are obligated to establish a proper system for controlling conflicts of interest between financial institutions within one financial group.

7 How has regulation changed in response to the recent crisis in the banking industry?

While the direct impact of the financial crisis on the health of the Japanese financial system has been limited compared with that of the United States and Europe, Japanese corporations, particularly small and medium-sized enterprises, have been continuously facing difficulties when raising funds due to the successive economic recessions. Thus, it is becoming increasingly important for banks to play their financial intermediary function without excessive caution. In order to allow banks to confidently supply funds to small and medium-sized enterprises, the FSA has been taking various measures including promptly enforcing the amended Law on Special Measures for Strengthening Financial Functions. Pursuant to this amended law, public money was injected into several regional banks in 2009. Further, the FSA introduced the temporary relaxation of the capital adequacy requirements for banks as described in question 17. In addition, the Law concerning Temporary Measures to Facilitate Financing for Small and Medium-Sized Enterprises, etc, came into force in December 2009 and will remain in effect until March 2011. This law aims to cope with the credit crunch and facilitate financing for small and medium-sized enterprises.

8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

The FSA has promoted better regulation since the summer of 2007. Better regulation refers to improving the quality of financial regulations and supervisions in order to enhance their effectiveness, efficiency, consistency and transparency. The FSA now regards better regulation as the most important regulatory regime for the financial services industry including the banking industry in the forthcoming years, and has been engaged in various efforts in achieving better regulation to effectively respond to continuously changing financial markets and to make Japanese financial markets more competitive.

Better regulation focuses on the following four pillars:
(i) an optimal combination of rules-based and principles-based supervisory approaches;
(ii) timely recognition of priority issues and provision of effective responses thereto;
(iii) encouraging voluntary efforts by financial institutions and placing greater emphasis on providing them with incentives; and
(iv) improving the transparency and predictability of regulatory actions.

As part of (i) above, in April of 2008, the FSA published '14 Principles in the Financial Services Industry', which was formed after conducting discussions among the FSA and relevant parties in the financial services industry. These principles are similar to '11 Principles for Businesses' issued by the UK FSA. The FSA has continuously engaged in efforts to ensure that FSA officials are fully acquainted with the purposes of the principles and promote a common understanding of the purpose of the principles by the relevant parties in the financial services industry. The FSA believes that if a deep understanding of the principles is commonly shared by financial institutions, including banks, they will take voluntary efforts to meet the principles in their own business operations in order to take best practices beyond mere minimum standards that could be established.

Supervision

9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The FSA supervises banks by way of both off-site monitoring and on-site examination in accordance with the Bank Law, Supervisory Policies and Examination Manuals.

A bank must submit annual and semi-annual reports to the FSA that describe the status of the bank's business and property. A bank must also periodically report extensive data to the FSA. Further, the FSA regularly holds various hearings with banks with respect to the operations, risk management, internal audit and other affairs of the banks as part of its off-site monitoring. In addition, the FSA may, when it deems it necessary to ensure the safety and soundness of a bank, require the bank (and if necessary, its subsidiaries and affiliates) to submit additional reports or materials that would be helpful in understanding the status of the business or property of that bank.

The FSA may conduct on-site examinations if it deems it necessary to ensure the safety and soundness of a bank. During such on-site examinations, FSA officials may enter an office or any other facility of a bank, ask questions with respect to the status of the business or property of that bank, and inspect books, documents or other records of that bank. Moreover, to the extent necessary, FSA officials may conduct a similar inspection of a bank's subsidiaries and affiliates.

10 How do the regulatory authorities enforce banking laws and regulations?

In addition to capital-based prompt corrective action (as described in question 14), the FSA's enforcement procedures include: business improvement orders; orders of suspension of operations; orders to remove a bank's management; and revocation of a bank's banking business licence. If the FSA finds it necessary to ensure the safety and soundness of a bank, it may issue a business improvement order and instruct the bank to submit a business improvement plan, and, if necessary, it may also order the suspension of that bank's operations for a specified period of time. The FSA may also order other actions as necessary, such as the deposit of bank property. Further, if a bank has violated any laws, regulations or its articles of incorporation, or if a bank has committed an act that harms public interests, the FSA may order the suspension of the bank's operations, order the removal of its management, or may revoke its banking business licence. A bank that breaches the enforcement procedures of the FSA may be subject to criminal sanctions.

11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

We have reviewed published reports with respect to each of the FSA enforcement actions over the past eight years and did not observe any particular pattern of enforcement issues. However, in 2009, the FSA's major enforcement actions against banks were business improvement orders intended to strengthen banks' risk management systems. The FSA has initiated a practice of announcing their annual enforcement priorities. Among other items, the FSA described the following as important priorities in its most recent annual supervisory policy statements:
- reviewing the quality of banks' risk management systems;
- reviewing performance of financial intermediary functions that are being provided by banks, particularly with respect to the financing of small and medium-sized enterprises; and
- reviewing systems put in place for the convenience of banking customers and systems put in place to protect the interests of banking customers.

12 How has bank supervision changed in response to the recent crisis?

The FSA has amended the Supervisory Policies in August 2008 to place greater emphasis on risk management, taking the turmoil in the financial and capital markets triggered by the subprime mortgage problem into consideration. The amended Supervisory Policies include various check points regarding supervision. The amendments added new check points with respect to risk management (including items regarding establishment of a risk management system, securitisation products risk management, management of counterparty risk, and information disclosure). During the course of its supervision and examination of each bank, the FSA verifies whether the newly adopted check points are reflected in the bank's risk management practices.

Capital requirements

13 Describe the legal and regulatory capital adequacy requirements for banks.

The capital adequacy requirements applicable to the banks closely follow the risk-adjusted approach proposed by the Basel Committee. The capital adequacy requirements applicable to the banks with international operations require a target minimum standard capital adequacy ratio of 8 per cent (at least half of which must consist of core capital, or tier I capital) on both a consolidated and non-consolidated basis.

For the banks with international operations, the capital is classified into three tiers, each of which is referred to as: core capital, or tier I capital; supplementary capital, or tier II capital; and junior supplementary capital, or tier III capital.

Tier I capital generally consists of:
- total shareholders' equity;

  less
- unrealised losses on available-for-sale securities under Japanese GAAP;
- any recorded goodwill; and
- capital increase due to securitisation transactions.

Tier II capital generally consists of:
- general reserves for loan losses (subject to a limit of 1.25 per cent of total risk-adjusted assets and off-balance sheet exposures);
- 45 per cent of unrealised gains on available-for-sale securities under Japanese GAAP and of the unrealised appreciation in the value of land;
- the balance of subordinated perpetual debt; and
- the balance of subordinated term debt with an original maturity of over five years and limited-life preferred equity (up to 50 per cent of tier I capital).

Tier II capital may be counted up to the amount equivalent to the tier I capital (less tier III capital where market risk is included in the capital adequacy ratio calculation).

Tier III capital consists of the balance of subordinated term debt with an original maturity of at least two years. Tier III capital may be counted, subject to certain conditions, according to the amount of market risk or the amount of tier I capital.

Banks with only domestic operations are subject to capital adequacy requirements similar to those applicable to the banks with international operations with some differences. The main differences are:
- banks with only domestic operations are required to have a target minimum standard capital adequacy ratio of 4 per cent, at least half of which must consist of tier I capital;
- general reserves for loan losses of banks with only domestic operations are subject to a limit of 0.625 per cent of total risk-adjusted assets and off-balance sheet exposures; and
- unrealised gains of available-for-sale securities may not be included in tier II capital for banks with only domestic operations.

14 How are the capital adequacy guidelines enforced?

If the capital adequacy ratio of a bank becomes less than a target minimum standard capital adequacy ratio and the FSA finds it necessary for the adequacy of equity capital of a bank, the FSA may take the following capital-based prompt corrective actions:
- order the bank to submit a business improvement plan to ensure sound management of that bank;
- order a suspension of operations; or
- issue other orders in accordance with the capital adequacy ratio of that bank.

In the case of a bank with international operations, the FSA may order the following:
- Category 1 (capital adequacy ratio: not less than 4 per cent, up to less than 8 per cent): submission of a business improvement plan (including the measures for capitalisation) and execution of such plan;
- Category 2 (capital adequacy ratio: not less than 2 per cent, up to less than 4 per cent):
  - (i) submission of a reasonable capitalisation plan and execution thereof;
  - (ii) prohibition or limitation of the distribution of profits or the payment of bonuses to the management of that bank;
  - (iii) reduction of total assets or restriction on total asset growth;
  - (iv) prohibition or limitation of the acceptance of deposits on terms unfavourable to that bank;
  - (v) downsizing of business operations in selected offices;
  - (vi) closing of selected branch offices; or
  - (vii) certain other measures prescribed by the regulations under the Bank Law;
- Category 3 (capital adequacy ratio: not less than 0 per cent, to less than 2 per cent): strengthening of its capital, substantial downsizing of its business operations, or merger with another bank or abolishment of its business operations; and
- Category 4 (capital adequacy ratio: less than 0 per cent): suspension of the whole or part of business operations.

In addition, if the FSA finds it necessary to improve a bank's profitability, as a precautionary measure, the FSA may conduct intensive hearings with that bank and order it to submit reports, and if necessary, the FSA may issue a business improvement order to that bank before the bank's capital adequacy ratio becomes less than the target minimum standard capital adequacy ratio.

15 What happens in the event that a bank becomes undercapitalised?

In the event that a bank becomes undercapitalised, the FSA may take the measures as described in question 14 in accordance with the capital adequacy ratio of the bank. In addition, with respect to cases where a bank becomes insolvent, see question 16.

16 What are the legal and regulatory processes in the event that a bank becomes insolvent?

In situations where the assets of a bank are insufficient to meet its financial obligations, the FSA may order that the business or assets of that bank be placed under the management of a financial administrator under the Deposit Insurance Law. The FSA may appoint the DIC as a financial administrator. Upon issuance of an order for management, the financial administrator shall be given sole authority to represent the failed bank, to operate its business and to manage and dispose of its assets. In principle, the financial administrator must end its management of a bank within one year by transferring the business of that bank to a healthy bank, merging that bank with a healthy bank or by implementing other measures. A financial institution that seeks to purchase the business of or merge with a failed bank may apply for support from the DIC such as a monetary grant, loan or deposit of funds. If no financial institution seeks to acquire the business of a failed bank, the DIC may establish a bridge bank to acquire it.

Further, if the failure of a bank may have an extreme effect on Japanese credit markets or of an area where the bank operates its business, the DIC may inject public money into that bank, before the failure of that bank. In addition, in case of the failure of a bank, the DIC may give financial assistance to the bank to provide for the payment of deposit insurance claims or temporarily nationalise the bank. In situations where the DIC temporarily nationalises a bank, the DIC must, at the earliest opportunity, make the temporarily nationalised bank:
- merge with another financial institution;
- transfer its business to other financial institution; or
- transfer its shares to other financial institution.

Insolvency procedures such as bankruptcy, civil rehabilitation, corporate reorganisation or special liquidation may also be initiated in cases where the assets of a bank are insufficient to reimburse its financial obligations. However, there have been few cases where financial institutions have entered into insolvency procedures.

17 Have capital adequacy guidelines changed, or are they expected to change in the near future?

In light of the deterioration of banks' ability to play their financial intermediary function due to the rapid fluctuation of their capital adequacy, the capital adequacy requirements for banks have been temporarily relaxed in order for banks to perform their financial intermediary function without limitations due to rapid fluctuations in their capital adequacy ratios. This temporary measure will remain in effect until March 2012. For an example of the standards applicable to the banks with international operations, under the previous rule, 45 per cent of unrealised gains on available-for-sale securities could be counted as part of complementary tier II capital when calculating a bank's capital adequacy ratio, while unrealised losses thereon were required to be deducted from tier I capital. Under the new rule, both unrealised gains and losses on certain public bonds with a zero risk weight (eg, governmental bonds) can be excluded when calculating a bank's capital adequacy ratio. During the effective period of this temporary rule, the banks may adopt this gains or losses exclusion arrangement at any time. However, once a bank has adopted this arrangement, it will not be allowed to return to the previous arrangement until the end of the effective period.

Ownership restrictions and implications

18 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

Both individuals and entities, regardless of whether they are foreign or domestic, may acquire a controlling interest in a bank. With regard to 'control', please see questions 20 and 23.

19 Are there any restrictions on foreign ownership of banks?

There is no restriction of foreign ownership of a bank under the Bank Law. The requirements for obtaining regulatory approval are common to both foreign and domestic ownership. Please see question 23.

20 What are the legal and regulatory implications for entities that control banks?

Japanese regulations designate two categories of entities that may control a bank: a major shareholder of a bank and a bank-holding company, each of which has different legal or regulatory implications under the Bank Law. A major shareholder of a bank is a person or an entity who holds an interest in a bank exceeding 20 per cent of the bank's outstanding voting rights (or 15 per cent, if the shareholder's interest is accompanied by certain rights indicative of control or influence over the bank's affairs). A bank-holding company is a company who holds an interest in a bank exceeding 50 per cent of the bank's outstanding voting rights, and who holds Japanese subsidiaries with an acquisition value (or other value, if it is so recorded in the latest balance sheet) of more than 50 per cent of the total assets of the company (see question 23).

A major shareholder of a bank is subject to restrictions prescribed in the Bank Law and is subject to certain supervision of the FSA. When and to the extent necessary to ensure the safety and soundness of a bank, the FSA may conduct off-site monitoring (including periodical reporting concerning the operating and financial conditions of the major shareholder of a bank) and on-site examinations, which would be helpful for understanding the status of the business or property of that bank. Further, when a major shareholder of a bank no longer satisfies any of the requirements as a major shareholder of a bank as set forth in question 25, the FSA may order that major shareholder to take necessary measures to satisfy such requirements within a certain period of time. Moreover, a major shareholder of a bank which holds an interest in a bank exceeding 50 per cent of the bank's outstanding voting rights (a majority shareholder of a bank) is deemed to be responsible for securing the safety and soundness of the bank. Thus, the FSA may, when and to the extent necessary to ensure the safety and soundness of a bank after taking the status of the business or property of the majority shareholder of a bank and its subsidiaries and affiliates into consideration, order the majority shareholder of a bank to submit a business improvement plan and to execute such plan for securing the sound management of the bank, or may order other measures to the extent so necessary. Such order may include financial assistance by the majority shareholder of a bank to the bank.

A bank holding company is subject to restrictions under the Bank Law. The Bank Law limits the activities of a bank holding company to managing and controlling banks and other subsidiaries authorised to hold under the Bank Law and activities incidental thereto. Subsidiaries that a bank-holding company is authorised to hold under the Bank Law are limited to banks, and companies that are engaged in either certain financial business, certain business related to finance, or certain other business relating to the bank's operations. A bank holding company may own shares of a company so long as its interest in that company does not exceed 15 per cent of that company's voting rights.

The prior approval of the FSA is generally required before a bank-holding company may acquire a new subsidiary company, or when its existing subsidiary company changes the type of business it will conduct.

A bank-holding company must comply with the capital adequacy requirements and maintain adequate capital on a consolidated basis. Such requirements parallel the capital adequacy requirements for banks as explained in question 13.

A bank-holding company must comply with the credit granting ceiling rule, essentially in the same manner as its subsidiary banks do. This rule specifies that the maximum percentage of the bank-holding company's equity capital (with certain modifications) under the capital adequacy requirements that may be extended as credit to a borrower is 25 per cent, and that may be extended to a borrower together with its parent company and its subsidiaries is 40 per cent.

A bank-holding company is required to establish a proper system for controlling conflicts of interest between its group financial institutions in order to protect the interests of its customers essentially in the same manner as its subsidiary banks (as explained in question 6).

A director engaging in the ordinary businesses of a bank-holding company may not engage in the ordinary business of any other company without authorisation from the FSA.

A bank-holding company must submit to the FSA reports that contain consolidated statements on the status of business and property of that bank-holding company on a semi-annual basis.

A bank-holding company is subject to the supervision and enforcement authority of the FSA, which is similar to those over a bank. Further, in the course of such supervision and enforcement, the FSA may require a bank-holding company to take necessary measures, including providing financial assistance to the bank, in order to secure the sound management of the bank, taking the status of the business or property of the bank-holding company and its subsidiaries and affiliates into consideration.

21 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

Please see question 20.

22 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

There is no provision under the Bank Law that imposes criminal or administrative sanctions against the shareholders of an insolvent bank.

Changes in control

23 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

The prior approval of the FSA is required when an entity or person intends to become a major shareholder of a bank, or when a company intends to become a bank-holding company, except for certain cases such as an acquisition of the shares of a bank through foreclosure.

As set forth in question 20, a major shareholder of a bank is an entity or a person who holds an interest in a bank exceeding 20 per cent of the bank's outstanding voting rights (or 15 per cent, if the shareholder's interest is accompanied by certain rights indicative of control or influence over the bank's affairs). For the purpose of the calculation of such voting rights, the voting rights of the bank held by certain entities or persons who are related to an acquirer such as its consolidated subsidiaries and affiliates (as to affiliates, proportionately) and its joint holders (meaning another entity or person who holds voting rights of the bank and has agreed with such acquirer on joint acquisition or transfer of the bank's shares or on joint exercise of the voting rights or other right as shareholders of that bank) will be added to those held by such acquirer. Further, the ultimate parent company of such acquirer, if any, is also deemed to hold the voting rights of the bank held by such acquirer.

As set forth in question 20, a bank-holding company is a company that holds an interest in a bank exceeding 50 per cent of the bank's outstanding voting rights, and that holds Japanese subsidiaries with an acquisition value (or other value if it is so recorded in the latest balance sheet) of more than 50 per cent of the total assets of the company. For the purpose of the calculation of such voting rights, the number of voting rights of the bank held by subsidiaries of an acquirer may be added to those held by such acquirer, and such additional computation will apply to a parent company of such acquirer, so that multiple bank holding companies of the same bank may exist if each multiple holding company falls within the definition of a bank-holding company as set forth above as a result of such calculation.

24 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The FSA is generally receptive to foreign acquirers as long as they meet the statutory requirements for becoming major shareholders of a bank (as explained in question 25). Therefore, there is no material difference in the regulatory process for a foreign acquirer under the Bank Law. The requirements for obtaining regulatory approval are common to both foreign and domestic owners.

25 What factors are considered by the relevant regulatory authorities in considering an acquisition of control of a bank?

In evaluating whether to grant the approval for a major shareholder of a bank or a bank-holding company, as set forth in question 23, the FSA reviews the qualifications of each applicant from the following viewpoints.

In the case of an application by a major shareholder of a bank:

- whether the applicant would adversely affect the safety and soundness of the bank, taking into account the source of acquisition funds and the purpose of the acquisition, and the financial conditions and operation results of the applicant and its subsidiaries; and
- whether the applicant fully understands the public nature of the banking business, and has a satisfactory social reputation.

In the case of an application by a bank-holding company:

- whether the applicant and its subsidiaries can be expected to achieve and maintain profitability;
- whether the applicant and its subsidiaries have the adequate capital in light of the assets that they own; and
- whether the applicant has ability and experience that will enable it to carry out the management and operation of a subsidiary bank properly and fairly, and has a satisfactory social reputation.

26 Describe the required filings for an acquisition of control of a bank.

Pre-acquisition filings

The prior approval of the FSA is required when an entity or person intends to become a major shareholder of a bank, or when a company intends to become a bank-holding company, as set forth in question 23.

Post-acquisition filings

Any entity or person who has become a holder of more than 5 per cent of the total voting rights of a bank is required to submit a notice stating the percentage of the voting rights of the bank they hold and certain basic information about itself to the FSA within five business days. However, this deadline is extended to one month for a foreign acquirer. A similar notice must also be submitted within the same deadlines described above if the percentage of the holding subsequently increases or decreases by 1 per cent or more, or if there is any change in the information included in a previously submitted notice.

In addition, both a major shareholder of a bank and a bank-holding company must submit, without delay, a simple notice which states it has become a major shareholder of a bank or a bank-holding company.

27 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

The Bank Law specifies a time frame of one month (provided that such period may be two months with respect to certain banks designated by the FSA, and such period does not include any period of time necessary for an applicant to correct or amend its application documents) as the standard period for the FSA to evaluate whether to approve a major shareholder of a bank or a bank-holding company.

In addition, an applicant may request a preliminary evaluation by the FSA with respect to such approval so as to gauge the likely result of a formal evaluation by the FSA. However, despite the standard period, the actual period necessary for regulatory approval may significantly differ from case to case.

NISHIMURA & ASAHI

Tatsuo Tezuka **t2_tezuka@jurists.co.jp**
Taku Ishizu **t_ishizu@jurists.co.jp**
Masao Morishita **m_morishita@jurists.co.jp**
Susumu Tanizawa **s_tanizawa@jurists.co.jp**

Ark Mori Building
1-12-32 Akasaka, Minato-ku
107-6029 Tokyo
Japan

Tel: +81 3 5562 8500
Fax: +81 3 5561 9711 /12/13/14
www.jurists.co.jp

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