

PANORAMIC

**FINANCIAL SERVICES
COMPLIANCE**

Japan



LEXOLOGY

Financial Services Compliance

Contributing Editors

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REGULATORY FRAMEWORK

Regulatory authorities

What national authorities regulate the provision of financial products and services?

Financial products and services in Japan fall principally under the regulatory oversight of the Financial Services Agency of Japan (JFSA). The JFSA is authorised to propose and coordinate laws and regulations relating to the provision of financial products and services, and to inspect and supervise business operators providing such products and services.

The Securities and Exchange Surveillance Commission of Japan (SESC), a sub-division of the JFSA, is delegated with the authority to perform both on- and off-site inspections of business operators providing financial products and services. Local finance bureaux (LFBs) in Japan are similarly authorised to inspect and supervise such business operators operating within the ambit of their jurisdiction and to review disclosure documents (such as securities registration statements; annual, semi-annual and quarterly securities reports; and large shareholding reports) submitted to them under the [Financial Instruments and Exchange Act of Japan](#) (FIEA).

Products and services that are linked to commodities and commodities derivatives are regulated by the Ministry of Economy, Trade and Industry of Japan and the Ministry of Agriculture, Forestry and Fisheries of Japan, depending on the type of commodities involved. As a practical matter, however, such products and services generally are not considered financial products and services.

Law stated - 10 1 2024

Regulatory authorities

What activities does each national financial services authority regulate?

Activities regulated by the JFSA are generally those governed by the FIEA. The FIEA categorises these activities into four types of business (each a Financial Instruments Business):

- Type I Financial Instruments Business (Type I Business);
- Type II Financial Instruments Business (Type II Business);
- Investment Advisory and Agency Business (IAA Business); and
- Discretionary Investment Management Business (DIM Business).

Type I Business includes the following activities:

1. sale and purchase of, or dealing in, exchange-traded derivatives related to Type I Securities (as defined below);
2. provision of intermediary, brokerage and proxy services in respect of the activities described in (1);
3. provision of consignment services in respect of the activities covered under (2);

4. provision of brokerage services for the clearing of Type I Securities;
5. secondary distribution of Type I Securities;
6. dealing in public offerings, private placements or secondary distributions of Type I Securities;
7. securities underwriting;
8. acting as principal or provision of intermediation, brokerage or proxy services in over-the-counter (OTC) derivatives transactions; and
9. acceptance of fund, securities or certificate deposits from customers in connection with any securities-related business, and transfer of bonds and other instruments into customers' accounts.

Type II Business includes the following activities:

1. sale and purchase of, or dealing in, exchange-traded derivatives related to Type II Securities (as defined below);
2. provision of intermediary, brokerage and proxy services in respect of the activities described in (1);
3. provision of consignment services in respect of the activities described in (2);
4. provision of brokerage services for the clearing of Type II Securities;
5. secondary distributions of Type II Securities;
6. dealing in public offerings, private placements or secondary distributions of Type II Securities;
7. public offerings or private placements (as the issuer) of certain securities related to investment funds; and repurchase of such issued securities, for purposes other than the resale of such securities;
8. dealing in exchange-traded derivatives that are not related to securities;
9. providing intermediary, brokerage and proxy services in respect of the activities described in (8);
10. providing consignment services in respect of the activities described in (9); and
11. providing brokerage services for the clearing of non-securities related transactions.

IAA Business includes the following activities:

- provision of non-discretionary investment advice in relation to securities or derivative transactions, for which advisory fees are payable based on a non-discretionary investment advisory contract; and
- provision of intermediary or agency services for the execution of a non-discretionary investment advisory contract or DIM contract.

DIM Business includes the following activities in relation to investment in securities or derivative transactions:

- managing the assets of an investment corporation established under the [Investment Trusts and Investment Corporations Act of Japan](#) (ITICA) based on an asset management contract with the investment corporation;
- managing the assets under a DIM contract;
- managing the assets of an investment trust established under the ITICA and acting as a settlor for such investment trust; and
- managing the assets of a collective investment scheme (such as a limited partnership established under the laws of Japan or any other jurisdiction) as a general partner of such a scheme.

Law stated - 10 1 2024

Regulatory authorities

What products does each national financial services authority regulate?

The JFSA regulates products related to securities and derivative transactions.

Securities are defined in the FIEA as comprising:

- liquid securities, including but not limited to bonds, stocks, beneficial interests in investment trusts established under the ITICA or the laws of any other jurisdiction, shares in investment corporations established under the ITICA or the laws of any other jurisdiction and security tokens that constitute electronically recorded transferable rights (Type I Securities); and
- illiquid securities, including but not limited to interests in partnerships established under the laws of Japan or any other jurisdiction (Type II Securities).

Derivatives are defined in the FIEA as comprising:

- exchange-traded derivatives; and
- OTC derivatives transactions, which cover a broad range of derivative transactions (such as transactions involving foreign exchange (FX), currency, interest rate, credit and crypto assets), but exclude:
 - physically settled FX forward and FX swap transactions; and
 - OTC derivative transactions that are not linked to financial instruments.

However, certain commodities derivatives are regulated under the [Commodities Futures and Exchange Act](#).

Further, high-frequency traders (including foreign traders) conducting regulated algorithmic trading (including both the sale and purchase of securities and exchange-traded derivatives) at local financial instruments exchanges or proprietary trading system markets based in Japan are subject to registration requirements. Prerequisites for such registration do not include the establishment of an office in Japan. However, having a representative or agent

in Japan is necessary. Local securities firms are prohibited from accepting orders from unregistered high-frequency traders.

Law stated - 10 1 2024

Authorisation regime

**What is the registration or authorisation regime applicable to financial services firms and authorised individuals associated with those firms?
When is registration or authorisation necessary, and how is it effected?**

Registration requirements

A business operator wishing to engage in the Financial Instruments Business is, in principle, required under the FIEA to be registered as a financial instruments business operator (FIBO) beforehand. To successfully register as a FIBO, a business operator has to meet certain conditions, including but not limited to:

- having a business office and representative in Japan (inapplicable to an IAA Business);
- meeting minimum capital and net worth requirements (specifically, at least ¥50 million (or more, in certain cases) in respect of Type I Business, at least ¥10 million in respect of a Type II Business and ¥50 million (or less, where certain conditions apply) in respect of a DIM Business, but inapplicable to an IAA Business); and
- meeting certain internal system requirements, such as having an appropriate organisational structure in place.

Applications for FIBO registration have to be filed with the relevant LFB. In practice, applicants are generally required to consult with the relevant LFB to discuss the details of their proposed businesses, the appropriateness of their organisational structure and internal business rules, and other matters, and to obtain informal regulatory approval for filing before submitting a formal application. Assuming this informal consultation process (which may take a few months) is observed, two months will typically be required from the date of submission of a formal application to the date of completion of registration, unless amendments to the application forms or supporting documents are necessary, in which case more time would be needed.

Foreign entities engaging in a business similar to an IAA Business, a DIM Business, certain Type I Businesses or certain Type II Businesses in its home jurisdiction, and certain entities and persons associated therewith (such as its parent and subsidiaries) may receive English-language support in their applications for registration as an IAA Business, a DIM Business, the relevant Type I Business and the relevant Type II Business from the Financial Market Entry Office (FMEO). The FMEO was jointly established by the JFSA and LFBs in January 2021 to handle registration (including the aforementioned informal consultation process) and supervision of foreign asset management firms that are new to the Japanese market. The FMEO functions as a single point of contact with the capacity to conduct communications in English. Foreign entities (or their local affiliates in Japan, as applicable) may, with the support of the FMEO, prepare and file applications for registration as an IAA

Business, a DIM Business, the relevant Type I Business and the relevant Type II Business in English.

Exemption from registration requirements

Under the FIEA, business operators who satisfy certain requirements are permitted to engage in certain Financial Instruments Businesses without registration as a FIBO. The main registration exemptions are discussed below.

Article 63 business exemption

Registration exemptions are available under article 63 of the FIEA to general partners of partnerships with:

- at least one qualified institutional investor (such as a FIBO engaging in a Type I or DIM Business, a bank or an insurance company); and
- less than 50 eligible non-qualified institutional investor investors (which are limited to persons such as the general partner itself, a parent or a subsidiary of the general partner, officers and employees of the general partner, its parent or subsidiary, and certain high-net-worth individuals).

Specifically, such general partners may:

- solicit Japan residents for investments in interests in their partnerships without registration as a Type II Business; and
- manage the assets of their partnerships for investors resident in Japan without registration as a DIM Business.

However, an article 63 notification has to be filed with the relevant LFB before the commencement of any investment solicitation activities.

Foreign investor exemption

A general partner that satisfies certain requirements (including but not limited to having an appropriate organisational structure and having an office in Japan) may:

- solicit investments in partnership interests from foreign investors and others – including certain Japan residents, such as qualified institutional investors – without registration as a Type II Business; and
- manage the assets of such a partnership without registration as a DIM Business by filing the requisite notification with the relevant LFB before commencing investment solicitation activities.

To qualify for this exemption, a general partner must ensure that more than 50 per cent of the money invested in the partnership is sourced from residents outside Japan.

De minimis exemption

A general partner of a partnership established under the laws of a foreign jurisdiction is permitted to manage the assets of such a partnership, without registration as a DIM Business or filing an article 63 notification, if all of the following conditions are met:

- all the Japan-resident investors who have directly and indirectly invested in the partnership are qualified institutional investors;
- the partnership has fewer than 10 Japan-resident investors; and
- the total partnership contributions from such Japan-resident investors is less than one-third of the total contributions from all investors in the partnership.

Foreign securities firm exemption

A foreign entity engaging in the securities business in a foreign jurisdiction in accordance with the laws of the relevant foreign jurisdiction is permitted, without registration as a Type I or Type II Business, to engage in certain securities-related activities, provided such activities are carried on from offices outside Japan and with limited categories of counterparties.

Foreign investment adviser and manager exemption

A foreign entity licensed to engage in a non-discretionary investment advisory business or a discretionary investment management business in its home jurisdiction is permitted, without registration as an IAA Business or DIM Business, to provide a FIBO engaging in the DIM Business with non-discretionary investment advisory services or discretionary investment management services.

However, such foreign investment advisers and managers are still prohibited from providing non-discretionary investment advisory services and DIM services to FIBOs registered to engage in the IAA Business.

Temporary foreign investment manager exemption

A foreign entity licensed to engage in a discretionary investment management business in the prescribed jurisdictions (ie, the United States, the United Kingdom, Australia, Singapore, Switzerland, Germany, France and Hong Kong) who satisfies certain requirements (including but not limited to having operations in any of the aforementioned jurisdictions for over three years, having an appropriate organisational structure and having an office in Japan) is permitted, without registration as a DIM Business, to provide foreign investors and others (including FIBOs engaging in the DIM Business) with certain discretionary investment

management services through its local office in Japan for up to five years by filing the requisite notification with the relevant LFB. To qualify for this exemption, no more than 50 per cent of the assets under management must be invested in Japanese stocks, among others, with voting rights.

A foreign entity that has filed the aforementioned notification may also solicit the following from foreign investors and others:

- investments in interests in foreign investment trust;
- foreign investment corporations; and
- foreign collective investment schemes (such as limited partnerships established under the laws of foreign jurisdictions) that will be managed by the relevant foreign entity without registration as a Type I or Type II Business.

This exemption was introduced as a temporary measure that will be available until 21 November 2026 and the aforementioned notification must be filed by that date.

Non-securities related OTC derivatives exemption

A person will not be deemed to be engaging in the Financial Instruments Business merely by acting as a principal or providing intermediation, brokerage or proxy services in non-securities-related OTC derivative transactions (except in cases where such derivative transactions are subject to certain statutory requirements or crypto assets related derivative transactions) where the counterparties are limited to:

- Type I Business FIBOs;
- financial institutions registered to conduct securities-related business under the FIEA;
- qualified institutional investors;
- stock corporations with paid-up capital of at least ¥1 billion; and
- an overseas equivalent of any of the above.

Registration as sales representatives

Under the FIEA, the officers and employees of a FIBO who engage in marketing activities such as the sale and purchase of Type I Securities – or dealing in the public offering, private placement or secondary distribution of Type I Securities – are required to be registered as sales representatives with the Japan Securities Dealers Association (JSDA), a self-regulatory body delegated with the authority to handle registration affairs by the JFSA. Persons seeking to be registered as sales representatives are required to pass a qualification examination administered by the JSDA.

Law stated - 10 1 2024

Legislation

What statute or other legal basis is the source of each regulatory authority's jurisdiction?

The JFSA, the SESC and LFBs derive their regulatory authority over financial instruments businesses from the FIEA, and cabinet orders and ordinances issued thereunder (together with the FIEA, the FIEA Regulations).

Law stated - 10 1 2024

Legislation

What principal laws and financial service authority rules apply to the activities of financial services firms and their associated persons?

The financial services industry in Japan is principally regulated by:

- the FIEA Regulations; and
- the [Comprehensive Guidelines for Supervision of FIBOs, etc](#) (the Supervisory Guidelines), issued by the JFSA.

The Supervisory Guidelines set forth the supervisory and inspection principles adopted by the relevant regulator toward FIBOs and the like. Accordingly, FIBOs and persons associated therewith are compelled, as a matter of practice, to comply with the Supervisory Guidelines.

Additionally, FIBOs and persons associated therewith are required to comply with the Civil and Criminal Codes of Japan.

Law stated - 10 1 2024

Scope of regulation

What are the main areas of regulation for each type of regulated financial services provider and product?

The main areas of FIEA Regulations in respect of FIBOs relate to:

- continuing registration requirements;
- codes of conduct; and
- the requirement to maintain proper books and records.

These are briefly discussed in turn, as follows.

To maintain the validity of their registrations:

- FIBOs registered as Type I Businesses are required to maintain both capital and net worth of at least ¥50 million (or more, in certain cases), respectively, as well as keep their capital adequacy ratios at 120 per cent or more;
- FIBOs registered as Type II Businesses are required to maintain capital of at least ¥10 million; and

- FIBOs registered as DIM Businesses are required to maintain both capital and net worth of ¥50 million (or less, where certain conditions apply), respectively.

These continuing registration requirements have been put in place to ensure the continued financial soundness of the registered FIBOs.

All FIBOs are also required to adhere to certain codes of conduct that seek to protect the interests of investors, including but not limited to the duty of loyalty, the duty of care of a good manager and the prohibition against compensating customers for their losses, as applicable to the services provided by the FIBOs.

Additionally, all FIBOs are required to prepare and maintain books and other records on their Financial Instruments Business, based on which their annual business reports will be prepared and submitted to the regulator.

These regulations do not apply to business operators relying on certain exemptions in the authorisation regime. However, a general partner who files an article 63 notification with the regulator is subject to certain codes of conduct in relation to the business within the scope of the article 63 business exemption, including but not limited to refraining from:

- engaging in transactions between funds that are managed by the same general partner; and
- compensating customers for their losses.

Such a general partner is also required to prepare and maintain books and records on its business under the article 63 business exemption, based on which its annual business reports will be prepared and submitted to the regulator.

Law stated - 10 1 2024

Additional requirements

What additional requirements apply to financial services firms and authorised persons, such as those imposed by self-regulatory bodies, designated professional bodies or other financial services organisations?

The self-regulatory bodies in Japan's financial services industry include:

- the JSDA;
- the Type II Financial Instruments Firms Association;
- the Japan Investment Advisers Association; and
- the Investment Trusts Association.

These organisations regulate the activities of their members and registration as a FIBO under the FIEA is generally a prerequisite of membership in these organisations. A FIBO is not legally obliged to be a member of any such organisation. In practice, however, FIBOs (other than those engaging in the IAA Business only) are required to establish internal business rules that are in line with the rules and regulations established by a self-regulatory body. Driven by their need to establish appropriate alternative dispute resolution measures, FIBOs

also find it necessary to join self-regulatory bodies, membership of which gives them the right to utilise the facilities of the Financial Instruments Mediation Assistance Center of Japan.

The rules imposed by such self-regulatory bodies mainly regulate the conduct of FIBOs from the perspective of investor protection. The rules of a self-regulatory body only apply to its members. Such rules do not have the force of law and violations would not necessarily result in official sanctions by the JFSA.

Law stated - 10 1 2024