

Alert | Financial Regulatory & Compliance



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Japanese Fintech Regulation Update: New Regulatory Framework for Financial Services Intermediary Business

The Act on Sales, etc. of Financial Instruments (Act No. 101 of 2000, ASFI) was recently amended to streamline the regulatory framework by creating a new license which covers intermediary services of different financial sectors through a single registration process, registration as the Financial Services Intermediary Business operator (FSIBO), in order to respond to such needs for ‘one-stop’ solution and boost more user-friendly services.

Background

Financial products and services provided by banks, securities broker-dealers and insurance companies are often dealt with by their associated intermediary, such as independent financial advisors. Currently, those intermediary services between financial institutions and clients may be regulated using a silo approach governed by relevant business regulations impacting a particular channel, e.g., banking, financial instruments, or insurance regulations. Fintech solutions which offer online personal finance services, e.g. budgeting apps, can offer multiple lines of services on a single technical platform. For example, a budgeting app may suggest its user obtain a bank loan, life insurance or investment products which would help the user’s financial or other life planning by integrating the saving and spending data or other information collected through its service platform. Such a platform provider is required, however, to

obtain each necessary license for each financial sector to launch such service, which would end up with higher license application and maintenance costs as well as cumbersome ongoing administration.

Financial Services Intermediary Business (FSIB)

FSIB includes any entity doing intermediary services (whether or not provided online) related to banking, insurance, securities, or moneylending between clients and banks, insurance companies, securities broker-dealers or moneylenders. The FSIB registration enables a service provider to provide all or part of these services under a single registration. In addition, a FSIBO which offers a digital solution may also engage in, by satisfying **certain additional requirements**, the Electronic Banking Settlement Agency Services, i.e., account information and payment initiation services on behalf of bank account holders, which are essential for online personal finance services.

Another feature of the new regulatory system is that the FSIBO is not required to be sponsored by a principal institution. Currently, for example, an independent financial advisor registered under the Financial Instruments and Exchange Act is engaged in its intermediary service on behalf of its principal broker-dealer(s) under the principal's supervision. It can intermediate only products and services of the principal, but not of others. In contrast, the FSIBO can offer products and services of various broker-dealers, which may permit clients to pick and choose financial products of different providers that best meet their needs.

Restriction on the FSIB

The amended ASFI also sets forth obligations and restrictions on the FSIBO to protect clients since the FSIBO's legal and proper conduct will not be backed up by the principal institution's supervision any more. A FSIBO is required to make a security deposit at a public deposit office before commencing its services to secure the payment of potential damages to its clients. In addition, a FSIBO can offer only those conventional products or services that do not need a sophisticated explanation to the clients. For example, it is expected that a FSIBO may deal with savings accounts, listed stocks and investment trusts, or travel insurance, but may not offer structured deposit products, unlisted stocks or derivative products, or variable or non-yen denominated insurances. The required amount of security deposit and the products and services that a FSIBO may not deal with will be specified in the Enforcement Order of the Act, which will be amended before the implementation of the amended ASFI.

Registration as FSIB

An applicant for FSIB is required to choose one or more services which it wants to offer from banking (savings, lending or remittance), insurance, securities or moneylending intermediation. To expand its lines of service later, it is required to amend the registration. An applicant needs to have sufficient staffing and corporate structure to conduct the proposed activities of the FSIB appropriately. In addition, an applicant must put in place internal policies in accordance with the standard to be set forth by the self-regulatory organization on FSIB. A foreign applicant is required to appoint a representative in Japan.

Conduct of FSIBO

A registered FSIBO is required to provide certain information about its service to its clients. The FSIBO must disclose fees or remuneration to be received from financial institutions or other matters upon clients' request. The FSIBO is generally prohibited from receiving deposit from clients in relation to its intermediation service with financial institutions.

In addition to such common requirements, the FSIBO is subject to further requirements depending on the financial sector where the FSIBO provides its services. For example, a FSIBO which is engaged in securities intermediary service is prohibited from using insider information or compensating the client's loss incurred from investments.

The FSIBO is required to keep books and records in accordance with the ASFI and to prepare an annual business report to be filed with the regulators within three months after the end of each business year.

Schedule

The amended ASFI will be implemented by the end of 2021. Specific regulations and requirements will be provided for by the upcoming amendment to the related orders.

** This GT Alert is limited to non-U.S. matters and law.*

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