

# Legal and Regulatory Framework

## A. Legal Tradition

Japan is a market with civil law tradition. To some extent, it has also been influenced by English law, European Union law, and US law.

## B. English Translation of the Law

### 1. Japanese Law Translation Database System

As far as the translation of the laws and regulations in Japan are concerned, the Ministry of Justice hosts a database of translated Japanese laws.<sup>2</sup>

### 2. Recommended English Expression

Separate from the above translations, examples of the Recommended English Expressions of Related Translations are included in Appendix 5.

## C. Legislative Structure—Bond Market

Japan features a multitiered legislative structure to govern the financial and capital markets.

[1st tier] Constitution

[2nd tier] Statutes and acts (key legislation for the market and market participants)

[3rd tier] Subordinate legislation (Cabinet Order or Ministerial Ordinance)

[4th tier] Self-regulatory organization (SRO) rules (e.g., Japan Securities Dealers Association [JSDA], Tokyo Stock Exchange [TSE])

<sup>2</sup> All of the translations contained in this system are unofficial. Only the original Japanese texts of the laws and regulations have legal effect, and the translations are to be used solely as reference materials to aid in the understanding of Japanese laws and regulations. The Government of Japan is not responsible for the accuracy, reliability, or currency of the legislative materials provided, or for any consequences resulting from use of the information on the website hosted by the Ministry of Justice. For purposes of interpreting and applying a law to any legal issue, users should consult the original Japanese text published in the Official Gazette. Furthermore, any translation in which the title of a law indicates it to be a tentative translation has not yet been proofread or corrected by a native English speaker or legal translation expert; these translations may be revised in the future. Japanese Law Translation Database System by the Ministry of Justice. <http://www.japaneselawtranslation.go.jp/?re=02>

Statutes and acts, in the context of the bond market, refer to legislation specifically aimed at the securities market or capital market. These laws establish and govern securities markets or market segments, including the bond market, and related institutions and participants, and define instruments and their basic issuance requirements. These laws are passed by the National Diet of Japan (Parliament) and need to be promulgated in the Official Gazette within 30 days of the Cabinet sending them to the Emperor for assent. Laws generally state in their text when they take effect. The Companies Act and the FIEA effectively represent the key legislation relevant for the Japanese bond market. The FIEA is the fundamental law governing the domestic financial and capital markets, as well as securities and other financial instruments in Japan.

Subordinate legislation is issued in the form of a Cabinet Order or Ministerial Ordinance by the Government of Japan or the MOF as the government body administering the legislation for the financial and capital markets in Japan. This subordinate legislation renders statutes and acts effective and interprets aspects from key legislation for practical application in the markets.

In turn, the rules of the SROs, which have been charged with governing the market and its participants on a day-to-day basis, play a very important part in defining the roles and responsibilities of market institutions and their participants, and the actions they may take. These rules contain descriptions on how regulations should be applied and specific market activities carried out.

Table A3.1 in Appendix 3 contains a list of examples of significant legislation related to the bond market and applicable rules for each of the tiers of the legislative structure explained above.

## D. Japan Bond Market Regulatory Structure

The capital market and various aspects of the bond market in Japan are governed by regulations issued and enforced by the MOF, Bank of Japan (BOJ), and FSA. In addition, the bond market is administered by three SROs: JSDA, the Japan Exchange Regulation (JPX-R), and TSE. The latter two are part of the Japan Exchange Group (JPX), which organizes their membership and market participation, and issues rules for market conduct and practices.

Market regulatory authorities involved in the bond and note issuance approval processes—in effect for corporate bonds, notes, and commercial paper—include the FSA and TSE.

### 1. Financial Services Agency

The financial and capital market of Japan is supervised solely by the FSA, which is part of the Cabinet Office. The FSA is the preeminent regulator for the Japanese financial industry and the domestic financial and capital markets. The Securities and Exchange Surveillance Commission is the FSA's enforcement arm for the securities market.

Pursuant to the FIEA, JPX-R and JSDA are SROs that oversee and inspect day-to-day securities trading. Market surveillance is a shared responsibility of the Securities and Exchange Surveillance Commission and these SROs.

## 2. Ministry of Finance Japan

The Financial Bureau of the MOF is responsible, among others, for matters concerning treasury systems, government debt management, local bonds, issuance of coins, the Fiscal Investment and Loan Program (FILP), national property, the tobacco industry, the salt industry, and ensuring proper management of BOJ operations and organization. In relation to JGBs, the MOF is responsible for maintaining balance in tenures or interest rates, among JGBs, announcing upcoming JGB issues, and providing relevant tax policies. The International Bureau of the MOF is responsible for the investigation, planning, and drafting of matters concerning foreign exchange and international monetary systems and their stability, adjustments of balance of payments, management of the Foreign Exchange Special Account, foreign exchange rates, international organizations related to economic cooperation or development, and loans and investment.

## 3. Bank of Japan

The BOJ decides and implements monetary policy with the aim of maintaining price stability. In implementing monetary policy, the BOJ influences the volume of money and interest rates through its operational instruments, including money market operations such as buying and selling JGBs, for the purpose of currency and monetary controls.

To contribute to the maintenance of the financial system's stability, the BOJ conducts on-site examinations and off-site monitoring of the institutions under its purview, and acts as the lender of last resort to provide liquidity as necessary. The BOJ is responsible for the entire operation of Japanese government securities, including issuance, registration, interest payment, and redemption.

## 4. Japan Securities Dealers Association

The JSDA is an association functioning as an SRO and as an interlocutor for the securities industry. Its legal status is as a Financial Instruments Firms Association authorized by the Prime Minister pursuant to Article 67-2, Paragraph 2 of the FIEA.

As a fully empowered SRO, the JSDA extensively regulates market intermediaries. Its self-regulatory functions encompass rule making, enforcement, inspection, disciplinary actions, accreditation of sales representatives, and dispute mediation. For a detailed review of the membership, roles, and functions of the JSDA, please refer to section E in this chapter.

## 5. Japan Exchange Regulation

Established under the FIEA as the self-regulatory arm of JPX, JPX-R is an entity specializing in the self-regulatory operations of financial instruments exchanges, such as Listing Examination, Listed Company Compliance, Market Surveillance, and Participants Inspection and Examination. JPX-R is conducting self-regulatory activities delegated by the TSE and the Osaka Exchange (OSE).

For a detailed review of the role and functions of JPX-R, please refer to section E in this chapter.

## 6. Tokyo Stock Exchange Regulation

As part of JPX, the TSE operates and governs the TPBM, the professional bond market in Japan. The TSE issues rules and regulations specifically for the TPBM as an SRO under the FIEA.<sup>3</sup>

For a detailed review of the role and functions of the TSE, please refer to section E in this chapter.

## E. Self-Regulatory Organizations and Their Roles in the Japan Bond Market

As far as the bond market in Japan is concerned, the participation and daily business activities are organized, governed, and administered by the three SROs described in detail in this section.

### 1. Japan Securities Dealers Association

Today, the JSDA comprises less than 500 members consisting of securities firms (categorized as Regular Members) and other financial institutions operating securities businesses in Japan (categorized mostly as Special Members and in a certain case as Specified Business Members).<sup>4</sup> As of 1 March 2016, JSDA members (Association Members) include 255 Regular Members, 212 Special Members, and 3 Specified Business Members.

In addition to its regulatory functions, the JSDA also provides vehicles for policy dialogue among the industry, the government, and other related parties; conducts and promotes investor education; and implements studies for further activating the market. The JSDA also has the authority to impose penalties upon Association Members. The purposes of the JSDA are to contribute to the protection of investors by ensuring fair and smooth trading in securities or other transactions by Association Members and promoting the sound development of the Japanese financial instruments business. Although there are other institutions performing SRO functions in Japan, their coverage of business and products is not as extensive as that of the JSDA.

The JSDA covers most of the transactions in Japan's capital market including those involving bonds, equities, and derivatives. In relation to the bond market, the JSDA is mainly concerned with rule-making, the establishment of best practices, and the bond price dissemination service. However, the JSDA does not operate a bond trading venue. The JSDA's bond market rule-making covers primary market underwriting rules (corporate bonds only) and secondary market trading rules. At the same time, in the context of the recently established market for bonds and notes issued under the ASEAN+3 Multi-Currency Bond Issuance Framework (AMBIF), the most relevant rules are provided by the TSE, which is the operator of the TPBM and its corresponding SRO.

The JSDA has also been providing a bond price dissemination service by gathering price information (based on the theoretical quotation) from designated Association Members and publishing these prices on a delayed basis (once a day). In addition to the existing system, the

<sup>3</sup> See <http://www.jpx.co.jp/english/equities/products/tpbm/index.html>

<sup>4</sup> Specified Business Members are financial instrument business operators exclusively dealing with specified over-the-counter derivatives transactions and/or crowd funding and other such activities.

JSDA started a new bond price dissemination service in November 2015 using actual traded prices for certain types of corporate bonds. For more details on the bond pricing service, please refer to Chapter III.I and Chapter IV.E.

In light of the fact that most bond and note transactions are being conducted in the over-the-counter (OTC) market in Japan, the JSDA in effect becomes a significant part of the regulatory structure. As a full-fledged independent SRO for the securities industry in Japan, the JSDA has issued a variety of rules, guidelines, and market practices for bond market participants. The main categories of these rules and guidelines are presented below.

#### *a. Self-Regulatory Rules*

JSDA members must comply with their own self-regulatory rules and guidelines. Their coverage ranges from items to be observed in outright transactions (sale or purchase) such as compliance with laws and regulations; maintenance of fairness of transactions; prohibition of extraordinary transactions; preparation and maintenance of trading records; and reporting of trade turnovers to items to be complied with in special transactions such as repurchase (repo) transactions and OTC options transactions requiring contracts or limiting the types of counterparties, among others. Regarding the rule requiring contracts, the JSDA has prepared a model format that has become the de facto standard in Japan.

The JSDA takes into account market conditions and the practical reality of transactions in establishing, revising, and abolishing rules for the purpose of achieving fair and smooth transactions in the Japanese securities market, thereby contributing to the protection of investors. During the rule-making process, a draft of rules is prepared first through deliberations mainly by JSDA members, subjected to public comment and other processes, and finally approved by the JSDA.

For easy reference, a list of the JSDA's Self-Regulatory Rules for Bond Transactions can be found in Table A3.2 in Appendix 3.

#### *b. Guidelines*

Guidelines are practical rules that the JSDA requests participants in the bond market to comply with and are thus recognized as best practices. As they are merely practices, those who do not comply with these guidelines are not penalized. However, as voluntary compliance with these guidelines in the overall market contributes to smooth and efficient transactions, most market participants observe the guidelines. Consequently, the JSDA collects and considers the opinions of market participants when setting new guidelines or revising or abolishing old ones. To date, the JSDA has published guidelines concerning delivery and settlement practices such as Deadline for Settlement (Cut-Off Time), Handling of Fails Charges, and order conclusion practices for When Issued Transactions, etc. for JGBs.

For easy reference, a list of the JSDA's recent guidelines related to the bond market can be found in Table A3.3 in Appendix 3.

#### *c. Others*

In addition to the above rules and guidelines, the JSDA occasionally issues advance notices to Association Members regarding standard procedures, such as the standard

calculation method of accrued interest, to eliminate the necessity of getting individual consensus between related parties regarding the unification of procedures among market participants.

## 2. Japan Exchange Regulation

JPX-R is the self-regulatory arm of JPX.

JPX was established via the combination of the TSE and the OSE on 1 January 2013. JPX operates financial instruments exchange markets to provide market users with reliable venues for trading listed securities and derivatives instruments. In addition to providing market infrastructure and market data, JPX also provides clearing and settlement services through a central counterparty and conducts trading oversight to maintain the integrity of the markets. In the course of working together as an exchange group to offer a comprehensive range of services, JPX continues to make every effort to ensure reliable markets and create greater convenience for all market users.

The TSE, OSE, JPX-R, and Japan Securities Clearing Corporation are JPX subsidiaries. Japan Securities Depository Center (JASDEC) is a JPX affiliate.

### *JPX-R's Self-Regulatory Function<sup>5</sup>*

Established under the FIEA as the self-regulatory arm of JPX, JPX-R is an entity specializing in self-regulatory operations of financial instruments exchanges such as Listing Examination, Listed Company Compliance, Market Surveillance, and Participants Inspection and Examination. JPX-R conducts self-regulatory activities delegated by the TSE and OSE.

On 1 April 2014, the corporate name was changed from Tokyo Stock Exchange Regulation to Japan Exchange Regulation, or JPX-R, as part of JPX's corporate restructuring.

JPX-R fulfills a number of duties related to the operation of a securities market. It examines companies to assess their suitability as listed companies, requires these companies to comply with disclosure requirements so that investors are able to make informed decisions, and provides a marketplace for these companies' shares to be traded.

Pursuant to the FIEA, JPX-R has self-regulatory functions to maintain a transparent, equitable, and reliable market in support of a healthy economy.

## 3. Tokyo Stock Exchange's Role as a Self-Regulatory Organization for the TOKYO PRO-BOND Market

The TSE operates and governs the TPBM, the professional bond market in Japan. The TSE issues rules and regulations specifically for the TPBM as an SRO under the FIEA.<sup>6</sup>

Among other things, general disclosure requirements laid out in the FIEA such as the Securities Registration Statement (SRS) do not apply to the securities listed on the TPBM.

<sup>5</sup> JPX-R. <http://www.jpx.co.jp/english/regulation/index.html>

<sup>6</sup> See <http://www.jpx.co.jp/english/equities/products/tpbm/index.html>

Instead, specific disclosure requirements for the TPBM are stipulated in the rules and regulations of the TSE, such as the Specified Securities Information (SSI) and the Issuer Filing Information.

In principle, information on the TPBM-listed bonds and notes and information on their issuers shall be disclosed pursuant to the TSE's TPBM Listing Regulations and Enforcement Rules. A list of relevant TSE rules and regulations can be found in Table A3.4 in Appendix 3.

The TSE's TPBM Listing Regulations and Enforcement Rules and the JSDA's Self-Regulatory Rules for Bond Transactions have a mutually important and complementary relationship. The actual trading of bonds and notes in the OTC market is regulated under the JSDA's Self-Regulatory Rules for Bond Transactions (see also section D.1).

#### 4. Outline of Coverage of the Three Self-Regulatory Organizations for the Japan Bond Market

For practical reference, the coverage of the three SROs with relevance for the bond market in Japan, including across its various segments, is provided in Table 9. Please refer to the relevant sections in this chapter for a detailed review of the roles and functions of each of the individual SROs.

**Table 9: Coverage of the Three Self-Regulatory Organizations in the Japan Bond Market**

		Primary Market	Secondary Market		
		OTC	OTC		EXCHANGE Trading System
JGBs		Government-Driven Market	JSDA		JPX-R (Conventional Market)
Corporate Bonds	Non-TPBM Listed Bonds	JSDA	JSDA		JPX-R (Only CBs are listed on the TSE)
	TPBM Listed Bonds (Profile Listing)	TSE	TSE	JSDA	n.a.

CB = convertible bond, JGB = Japanese Government Bond, JPX = Japan Exchange Group, JSDA = Japanese Securities Dealers Association, n.a. = not applicable, OTC = over-the-counter, TPBM = TOKYO PRO-BOND Market, TSE = Tokyo Stock Exchange.

Sources: JSDA and ABMF SF1.

The JSDA's SRO rule-making function provides a common platform for the securities business covering all types of financial instruments, including JGBs and corporate bonds, as far as the JSDA's member firms are involved in such business. At the same time, as shown in Table 9, the JSDA's rule-making does not apply to the JGB primary market and the trading of bonds and notes on exchanges.

In turn, JPX-R organizes and governs the trading of bonds and notes on the exchanges of JPX and across the conventional market in JGBs, as well as the trading of listed corporate bonds.

The TPBM features its own bond trading system in the TSE. However, all of the trading of its listed corporate bonds occurs on the OTC market, with market participants needing to observe certain selling and transfer restrictions.

**Relationship between the TPBM and the JSDA's Rules.** As the TPBM is operated by the TSE, the rules, in particular those related to private placement, are considered not applicable in the primary market of the TPBM. However, transactions involving TPBM-listed bonds in the secondary market depend upon the JSDA's rules and practices, including the price information of such bonds that are to be disseminated via the JSDA's statistical reference price system (see also Chapter III.I).

## F. Legal Framework of Public Offering and Private Placement

In the Japanese corporate bond market, the FIEA distinguishes between a public offering of securities and a private placement of securities, irrespective of whether those securities are issued domestically or outside of Japan.

Table 10 contains a matrix of the applicable regulatory framework for the issuance and the secondary distribution of bonds and notes via both public offering and private placement in Japan.

Noteworthy matters in relation to the newly established professional securities market regime will be the introduction of the following two concepts: (i) the Solicitation for Acquisition to Professional Investors; and (ii) the Solicitation for Selling, etc. to Professional Investors. (These correspond to Newly Issued Securities and Already-Issued Securities, respectively. Please see 2-2 and 4-2 in Table 10.)

The objective of the introduction of these two concepts had been to stipulate an exemption from the statutory disclosure requirement on the securities for the benefit of Professional Investors, and the implementation of selling and transfer restrictions on the securities aimed at general investors, while also paying close attention to their mutual relations. In other words, Japan had been faced with the difficult challenge that was thought to be near impossible to achieve: combining strong and effective investor protection with ensuring the efficiency of a professional market. Hence, it became a policy objective for Japanese regulatory authorities to establish the necessary legal infrastructure to address this challenge.

Table 10: Regulatory Framework Matrix in the Corporate Bond Market in Japan

N: Notification duty to the authority D: Disclosure requirements	Newly Issued Securities (Primary Market) (新発債発行市場)		Already-Issued Securities (Secondary Market) (既発債流通市場)	
(PO/SD)	1. Public Offering (PO) of Securities (公募) (A Solicitation of an application to acquire newly issued securities)		3. Secondary Distribution (SD) of Securities (売出し) (Offers to sell and solicitation of offers to purchase already-issued securities)	
N: Yes—SRS D: Yes—Prospectus (Articles 4 (1) and 5 (1) of the FIEA)	1-1 Public Offering of Securities (有価証券の募集) (Solicitation of an application to acquire newly issued securities)	(Definition) Article 2-3 (1), (2), (3) of the FIEA (excluding Article 2-3 (ii) (a) (b)) (Notification) Article 4-1 of the FIEA	3-1 Secondary Distribution of Securities (有価証券の売出し) (Offers to sell and solicitation of offers to purchase already-issued securities)	(Definition) Article 2-4 (1), (2), (3) of the FIEA (excluding Article 2-4 (ii) (a) (b)) (Notification) Article 4-1 of the FIEA
N: No, but in case total amount is more than JPY10 million, Securities Notice (SN) is required D: No	1-2. Small Amount Issuance: (Total amount of the issue price of securities offered is less than JPY100 million) [Note: However, small amount issuances are typically not evident in the market. Please refer to the explanation in the text (1-2).]	Article 4-6 of the FIEA (Disclosure) Article 13-1 of the FIEA	3-2. Small Amount Secondary Distribution (SD): (Total amount of the secondary distribution price of securities placed is less than JPY100 million) (However, small amount secondary distributions are typically not evident in the market. Please see the explanation in text (3-2).)	Article 4-6 of the FIEA (Disclosure) Article 13-1 of the FIEA
N: Yes—SRS D: Yes—Prospectus (Article 4-3 of the FIEA)	(Outside of Scope—Logically Impossible)		3-3. General Solicitation of Already-Issued Securities that Have Been Acquired by Professional Investors, Etc. (特定投資家等取得有価証券一般勧誘)	(Notification) Article 4-3 of the FIEA (exceptions apply)
N: No D: No, but it requires concise and simplified information	(Outside of Scope—Logically Impossible)		3-4. Secondary distribution of certain foreign-issued securities by Financial Instruments Business Operators (Foreign Securities-SD) (外国証券売出し)	Article 4 (1) (iv) of the FIEA, Article 2 (12) (ii), (iii) of the Order for Enforcement of the FIEA
(PP/PSD)	2. Private Placement (PP) of Securities (私募) (A Solicitation for Acquisition which does not come within the purview of Public Offering of Securities)		4. Private Secondary Distribution (PSD) of Securities (私売出) (Offers to sell and solicitation of offers to purchase which do not come within the purview of Secondary Distribution of Securities)	
N: No D: No	2-1. Private Placement to Qualified Institutional Investors (QII-PP) (適格機関投資家私募)	(Definition) Article 2-3 (ii) (a) of the FIEA (Notification) Article 4-3 (1) of the FIEA	4-1. Private Secondary Distribution to Qualified Institutional Investors (QII-PSD) (適格機関投資家私売出し)	(Definition) Article 2-4 (ii) (a) of the FIEA (Notification) Article 4-2 of the FIEA
N: No D: No, but it requires Specified Securities Information (SSI: 特定証券情報) (Article 27-31 of the FIEA)	2-2. Private Placement for Professional Investors (PP for PI, or Offer to PI) (特定投資家私募) (Solicitation for Acquisition to Professional Investors) (特定投資家向け取得勧誘)	(Definition) Article 2-3 (ii) (b) of the FIEA (Notification) Article 4-3 (1) of the FIEA Article 40-5 (2) of the FIEA (Listing) Article 117-2 of the FIEA	4-2. Private Secondary Distribution to Professional Investors (PSD to PI) (特定投資家私売出し) (Solicitation for Selling, etc. to Professional Investors) (特定投資家向け売付け勧誘等)	(Definition) Article 2-4 (ii) (b) of the FIEA Article 2-6 of the FIEA (Notification) Article 4-3 (2) of the FIEA (Listing) Article 117-2 of the FIEA
N: No D: No	2-3. Small Number Private Placement (SN-PP) (少数私募)	(Definition) Article 2-3 (ii) I of the FIEA	4-3. Small Number Private Secondary Distribution (SN-PSD) (少数私売出し)	(Definition) Article 2-4 (iii) of the FIEA

FIEA = Financial Instruments and Exchange Act, SRS = Securities Registration Statement.

Notes: Private Secondary Distribution (PSD: 私売出し) is not an official term in the FIEA, but has been used in market practice. PSD is basically exempt from the statutory disclosure obligations in the Secondary Distribution.

Source: ABMF SF1.

The explanations in text of the individual bond and note issuance formats are provided in the order—and with the numbering—used in Table 10.

### 1. Public Offering (公募)

As a general rule, both 1. Public Offering and 3. Secondary Distribution shall not be made unless an SRS is filed by the issuer or the seller (offeror) or, alternatively, a Shelf Registration with the Japanese FSA. Both forms of offer are subject to notification to the authority and statutory disclosure requirements under the FIEA.

The seller (offeror) in both the Public Offering and the Secondary Distribution must prepare and deliver a prospectus to each prospective investor. Also, the issuer of any securities offered either through Public Offering or Secondary Distribution shall be subject to continuous disclosure obligations under the FIEA.

The public offering of corporate bonds, securitized (asset-backed) bonds, and nonresident bonds—except supranational institutions of which Japan is a member—are basically subject to disclosure requirements under the FIEA. All other government bonds and public bonds are exempt from FIEA disclosure requirements.

#### 1-1. Public Offering (公募) (represents Solicitation of Acquisition of securities)

The term Public Offering of Securities as used in the FIEA represents solicitations of an application to acquire newly issued securities, referred to as a Solicitation for Acquisition. The seller (offeror) of the securities will incur the notification obligations of the filing of the Securities Registration Statement (SRS: 有価証券届出書) or, alternatively, the Shelf Registration (SR: 発行登録書) with the Director-General of the Kanto (or other applicable) Local Finance Bureau. The disclosure requirements, by way of filing an SRS or SR and delivering a prospectus (目論見書) under the FIEA and a related Order for Enforcement and Cabinet Office Ordinances, are applicable to this solicitation.

#### 1-2. Small Amount Issuance (Not typically evident, except for SME bonds)

A public offering shall not be made unless the issuer has filed an SRS or unless any of the possible exemptions apply. One such exemption is the Small Amount Issuance under which the total amount of the issue price of the securities offered in Japan (Issue Price) is less than JPY100 million. In calculating the JPY100 million, the amount of certain simultaneous and/or past offerings shall be aggregated. The Small Amount Issuance is not a private placement as such, but rather a special form of public offering exempted from the notification and filing requirement under the FIEA.

In the case of a Small Amount Issuance, a Securities Notice (SN: 有価証券通知書), instead of the SRS, is required if the total amount of newly issued securities is larger than JPY10 million but less than JPY100 million. If the total amount of newly issued securities is equal to or less than JPY10 million, no such SN is required. If required, an SN must be submitted to the Local Finance Bureau. The SN, which is not made available for public inspection, must be filed by one day before the commencement of solicitation.

In reality, no market exists for corporate bonds with an issuance size of less than JPY100 million. At the same time, the Small and Medium Enterprise Agency (中小企業庁) reports that the majority of SME bonds are issued in sizes of less than JPY100 million.

## 2. Private Placement (PP) (私募)

The term Private Placement of Securities means a solicitation for acquisition which does not come within the purview of a Public Offering of Securities in the FIEA. The seller (offeror) of the securities will not need to observe the statutory disclosure obligations. It should be noted that in the case of a private placement, the seller (offeror) is obliged to make notice to the acquirer of the securities that (i) it is an issue by private placement, (ii) the securities have not been notified to the authority (neither SRS nor SR has not been filed), and (iii) specific transfer restrictions are attached to them. The acquirer should understand them and acknowledge the contents of said transfer restrictions.

The FIEA prescribes the following three offer types as private placements. As to newly issued securities, any offering other than these three categories is basically categorized as under the purview of a Public Offering.

### 2-1. Qualified Institutional Investor-Private Placement (QII-PP or Offer to PI) (適格機関投資家私募):

Qualified Institutional Investors (QIIs) include securities companies, investment management companies, investment corporations, foreign investment corporations, banks, insurance companies, certain pension funds, and general partners of certain partnerships.

The QII-PP is an offer for acquisition to be made exclusively to QIIs. The following are the requirements for the QII-PP:

- (i) Offerees are limited to QIIs only.
- (ii) The kind of securities offered is not the same as (a) securities for which continuous disclosure is made or (b) securities for Professional Investors.
- (iii) Any transfer of the securities is prohibited unless the transferee is a QII; such transfer restriction is (a) written on the certificates of the securities to be delivered, (b) written on the offering document, or (c) disclosed through the book-entry system of JASDEC.

In addition, the seller (offeror) of the securities must deliver a document that states that no SRS has been filed for the QII-PP and describes the contents of the transfer restriction.

Using this scheme, many of Japan's SMEs have been issuing bank-underwritten private placement bonds.

In the event that the issuer of the newly issued securities under a QII-PP is a foreign entity, the issuer is required to appoint an issuer's agent who is a resident of Japan, according to Article 1-3 of the Cabinet Office Ordinance on Disclosure of the Contents of Foreign Bond Issuers (外国債等の発行者の内容等の開示に関する内閣府令). The objective of this ordinance is to determine if there is a breach of obligation of the notice relating to the restrictions on resale. This ordinance is applicable only to the QII-PP, and not the TPBM.

### 2-2. Private Placement for Professional Investors (PP for PI, or Offer to PI) or Specified Solicitation for Acquisition (特定投資家私募 又は 特定投資家向け取得勧誘):

The PP for PI is a newly added provision in 2008. Article 2 (3) (ii) (b) and Article 2 (4) (ii) (b) of the FIEA stipulate the exclusions of the Private Placement (PP for PI) and Private

Secondary Distribution (PSD to PI) from the definitions of Public Offering and Secondary Distribution, respectively. By introducing these offering types, a new market for Professional Investors only (TPBM) was created in Japan in 2011.

The following is a summary of the requirements for the Private Placement to Professional Investors (PP for PI):

- (i) PP for PI is to be made exclusively to Professional Investors [投資勧誘の対象は特定投資家に限定] .
- (ii) Solicitations are made by Financial Instruments Business Operators (e.g., securities companies). In principle, they cannot make any offer to a person other than Professional Investors [発行と転売は原則証券会社経由] .
- (iii) The issuer of the securities is required to provide a concise SSI such as the issuer's web address where Professional Investors can find the issuer's corporate information and financials, etc. The issuer, of course, is not prohibited from making full disclosure in the SSI. The issuer can also flexibly choose disclosure such as (a) documents incorporated by reference or (b) documents not incorporated by reference but for information purposes only. The distinction is that, typically, documents incorporated by reference may need to be given an endorsement by a third party, while documents not incorporated by reference but for information purposes only will typically not require such an endorsement [簡潔な特定証券情報の提供による発行体の開示負担軽減] .
- (iv) The offerors are obliged to make a notification to the acquirer of the securities that (a) it is an issue by private placement, (b) the securities have not been notified to the authority (neither SRS nor SR has been filed), and (c) the applicable selling and transfer restrictions are attached to them [特定投資家への告知義務] .

The economic nature of the Offer to PI can be similar to a public offering because the concept of Professional Investors is much broader than QII and the number of offerees is not limited under the Offer to PI.

### Specified Securities Information and the TOKYO PRO-BOND Market

Since the PP for PI is categorized as the Private Placement principally focusing on Professional Investors, and the PP for PI is excluded from the definition of public offering, the statutory disclosure requirements do not apply. However, the issuer of the securities is required to provide a concise SSI (特定証券情報) with respect to the securities and the issuer. The SSI basically combines two sets of information about (i) securities that are issued to Professional Investors and (ii) issuer information. If the issuer is a company listed on any Japanese financial instruments exchange or a nonlisted Japanese company with continuous disclosure, or a foreign company with continuous disclosure in its country of domicile, the SSI would typically represent information about the securities in question.

The TPBM was created as the specified financial instruments exchange market for providing this kind of concise SSI, based on the PP for PI scheme introduced in the FIEA.

### 2-3. Small Number Private Placement (SN-PP) (少数人数私募):

The SN-PP is a private placement to fewer than 50 persons (general investors).

The following are the requirements for an issuance of an SN-PP:

- (i) The total number of persons to whom the solicitation of an offer for acquisition is to be made, within any 6-month period in case of newly issued securities or 1-month period in case of already-issued securities, is 49 or less. In calculating the number of solicited persons for the purpose of the SN-PP, the number of the QIIIs is excluded from the total number of solicited persons only if the offer to such QIIIs fulfills the requirements of the QII-PP (see 2-1. i-iii).
- (ii) The kind of securities offered is not the same as (a) securities for which continuous disclosure is made or (b) securities for Professional Investors.
- (iii) Depending on the kind of securities, certain transfer restrictions are required. For instance, an SN-PP of bonds requires either
  - (a) a restriction of transfer other than en bloc transfer, or
  - (b) the number of the investment unit (e.g., number of bond certificates to be delivered) being less than 50 (dividing the investment unit is prohibited).

Such a transfer restriction must be written on the bond certificates to be delivered, written on the offering document, or disclosed through the book-entry system of JASDEC.

In addition, the seller (offeror) of the securities must deliver a document that states that neither an SRS nor an SR has been filed for the SN-PP and describes the contents of the transfer restrictions.

### 3-1. Secondary Distribution of Already-Issued Securities

As to secondary transactions for already-issued securities, these shall not be made unless the seller (offeror) has filed an SRS or SR with the Director-General of the Kanto (or other applicable) Local Finance Bureau.

There are several exemptions from notification and disclosure requirements attached to these secondary distributions. For instance, government bonds and public bonds are exempt from these requirements.

### 3-2. Small Amount Secondary Distribution of Already-Issued Securities (less than JPY100 million) (typically not evident in the corporate bond market)

A secondary distribution shall not be made unless the seller (offeror) has filed an SRS or unless any one of the potential exemptions applies. One such exemption is the Small Amount Secondary Distribution, under which the total amount of the price of securities offered in Japan is less than JPY100 million. In calculating the JPY100 million, the amount of certain simultaneous and/or past offerings shall be aggregated. The Small Amount Secondary Distribution is a special form of secondary distribution exempted from the notification and filing requirement under Article 4 (1) (v), Article 4 (5), and Article 4 (6) of the FIEA.

For this transaction, in case the issuance amount is more than JPY10 million, the filing of a Securities Notice (SN) may be required. If the issuer is either a listed company who has already been filing disclosure documents (securities reports and quarterly reports) continuously with the FSA, or a nonlisted entity who has already been continuously filing disclosure documents (annual securities reports and semiannual reports), who are collectively known as *kaiji kaisha*, then no notification is required for a secondary distribution of securities that amounts to less than JPY100 million. If the issuer is an entity who has not filed any disclosure documents with the FSA, who are collectively known as *hi-kaiji kaisha*, then a notification is required for a secondary distribution that amounts to more than

JPY10 million but less than JPY100 million. However, no notification is required if the total amount is less than JPY10 million.

### **3-3. General Solicitation of Already-Issued Securities That Have Been Acquired by Professional Investors** (特定投資家等取得有価証券一般勧誘)

The transactions listed in i-iii below are categorized as 3-3. General Solicitation of Already-Issued Securities that Have Been Acquired by Professional Investors, which are exempted from the need to file an SRS (Article 2-12-4 (2) (i) of the Order for Enforcement of the FIEA):

- (i) Secondary Distribution of Already-Issued Securities for which Continuous Disclosure is made (Article 4 (1) (iii) and Article 4 (3) of the FIEA);
- (ii) Solicitation for Delivery of Existing Securities, etc. made by a Financial Services Provider, etc. to Professional Investors, etc. for himself or herself (Article 2-12-4 (2) (i) of the Order for Enforcement of the FIEA and Article 4 (3) of the FIEA); and
- (iii) Solicitation for Delivery of Existing Securities, etc. made to Nonresidents by entrusting it to a Foreign Securities Services Provider (Article 2-12-4 (2) (ii) of the Order for Enforcement of the FIEA and Article 4 (3) of the FIEA).

For the transactions above, an SRS (有価証券届出書) is not required (Article 4 (3) of the FIEA). A prospectus and the filing of a Securities Notice (SN: 有価証券通知書) are required only under limited circumstances.

### **3-4. Secondary Distribution of Certain Foreign-Issued Securities by Financial Instruments Business Operators (Foreign Securities-SD)** (外国証券売出し)

This is categorized as a kind of secondary distribution but is exempted from filing an SRS. Other disclosure requirements are modified, although the provision of concise and simplified information is still necessary.

For this type of transaction, defined as a Secondary Distribution of Securities That Have Already Been Issued in a Foreign State, or for securities specified by a Cabinet Order as being equivalent (外国証券売出し), neither an SRS, a prospectus, nor an SN are required under Article 4 (1) (iv) of the FIEA or Article 2 (12) (ii), (iii) of the Order for Enforcement of the FIEA.

Under certain conditions in which disclosure has been made overseas, the required information on the securities and the trading price of the securities in Japan, etc. should be provided to the investors, etc. (Article 27-31 and Article 27-32 of the FIEA).

Although the Financial Instruments Business Operators offering foreign securities must provide a minimum necessary level of information on the securities and the issuer at the time of offering, any time the investors make a request after the offering, and at the time when certain material events (such as default of the issuer) occur after the offering.

#### 4. Items Categorized as Private Secondary Distribution (PSD)

Private Secondary Distribution (PSD: 私売出し) is not an official term in the FIEA, but the term is used in market practice and therefore is included in this guide. PSD is basically exempt from the statutory disclosure obligations for Secondary Distribution.

As such, the offer types shown under 4-1, 4-2, and 4-3 are not deemed to be instances of Secondary Distribution, but are instead treated as PSDs.

##### 4-1. Qualified Institutional Investor-Private Secondary Distribution (QII-PSD)

(適格機関投資家私売出し)

In the case that

- (i) all counterparties in the offering are QIIs,
- (ii) the issuer is not subject to continuous disclosure obligations in relation to securities of the same kind as the securities to be offered, and
- (iii) a transfer restriction is imposed on the acquirers prohibiting transfer to any person other than QII(s),

then the secondary offering may constitute a QII-PSD, in which case the issuer will not be subject to any disclosure obligations. When considering item (ii) above, such exemptions may only be available in the case of foreign (nonresident) securities.

##### 4-2. Private Secondary Distribution to Professional Investors (PSD to PI)

(特定投資家私売出し)

PP for PI and PSD to PI are excluded from the definition of public offering and secondary distribution, respectively. Hence, the statutory disclosure requirements do not apply to them.

##### 4-3. Small Number Private Secondary Distribution (SN-PSD)

(少人数私売出し)

In the following case that

- (i) the issuer is not subject to continuous disclosure obligations in relation to securities of the same kind as the securities to be offered;
- (ii) the number of counterparties in the offering is less than 50,
- (iii) for certain types of securities, the acquirer is prohibited from transferring the acquired securities (transfer restriction) except to a single person in a single transaction; or
- (iv) for foreign securities, privately distributed and already issued outside Japan to a small number of Japanese residents,<sup>7</sup>

<sup>7</sup> In cases where foreign (nonresident) securities were privately brought to Japan, if the financial institution has made an SN-PSD of foreign bonds in Japan, by the rules of the JSDA, the financial institution must notify the JSDA of the number of owners and other information about the securities that the financial institution has dealt with. The JSDA, based on the notifications received from each financial institution, should aggregate the number of owners of the same securities. If the number exceeds 1,000, it is not allowed to continue bringing newly issued securities of the same type into Japan.

then the secondary offering may constitute an SN-PSD, in which case the issuer will not be subject to any disclosure obligations. When considering item (i), such an exemption may only be available in the case of foreign (nonresident) securities.

### 5. Other Transaction Types Excluded from the Definition of Secondary Distribution

Transactions (i)–(v) listed below are excluded from the definition of secondary distribution of securities and, therefore, the filing of an SRS and disclosure requirements do not apply (Article 1-7-3 of the Order for Enforcement of the FIEA):

- (i) transactions on a stock exchanges or proprietary trading system (PTS); the sale and purchase of securities conducted on a financial instruments exchange market or on a PTS (Article 2 (17) and Article 67 (2) of the FIEA);
- (ii) block trades between Financial Instruments Business Operators (e.g., securities companies and other financial institutions authorized to operate a securities business) or Professional Investors;
- (iii) certain transactions between Financial Instruments Business Operators;
- (iv) sale of securities, for which any PP has not been made in the past, between people who have close relationships with the issuer (e.g., directors of the issuer, major shareholders of the issuer, parents or subsidiaries of the issuer) or Financial Instruments Business Operators, provided that transactions are excluded, if both parties are Financial Instruments Business Operators; and
- (v) sale of securities, for which any PP has not been made in the past, by a person who is not listed in (iv).

## G. Securities Issuance Regulatory Processes

### 1. Overview of Regulatory Processes in Japan

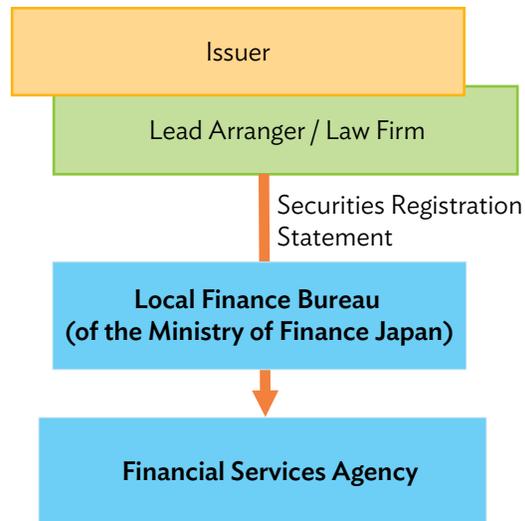
In Japan, the regulatory processes for the issuance of bonds and notes are inherent in the disclosure requirements for the respective type of offering, whether a public offering or a private placement. There are no approvals required from regulatory authorities for the public offering of bonds or notes, but issuers are required to file an SRS as part of the disclosure requirements for public offers. In turn, no approvals are required for the issuance of bonds or notes via private placement; instead, the issuer is required to provide the SSI as part of the respective disclosure requirements.

Only in the case of a listing for profiling of a private placement on the TPBM is an approval for said listing required by the TSE.

### 2. Regulatory Process Map—Public Offering

Figure 10 illustrates the regulatory process for the issuance of bonds and notes through a public offering. The process fundamentally consists of the filing of the SRS with the responsible Local Finance Bureau of the MOF, which is then to be directed to the FSA.

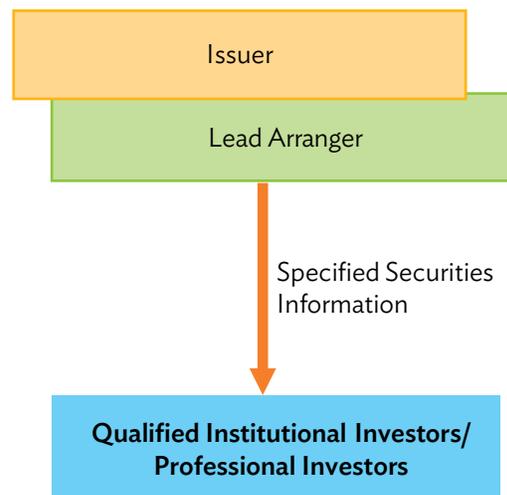
For a description of the necessary disclosure requirements, which include the submission of the SRS to the FSA, please see Chapter II.F. For the details on disclosure for public offerings, please see Chapter II.H.

**Figure 10: Regulatory Process Map—Public Offering**

Source: ABMF SF1.

### 3. Regulatory Process Map—Private Placements

Figure 11 details the regulatory process for the issuance of bonds and notes via a private placement. The process consists only of the provision of the SSI to the QII and/or Professional Investors.

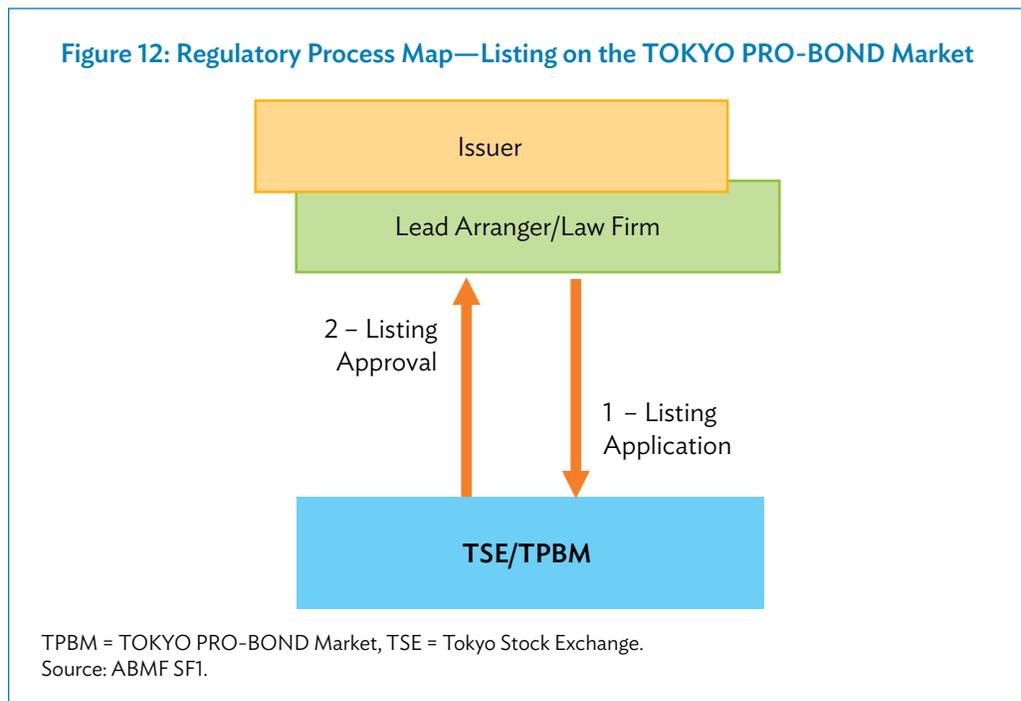
**Figure 11: Regulatory Process Map—Private Placement**

Source: ABMF SF1.

For a detailed description of the necessary disclosure requirements, including the provision of the SSI, please refer to Chapter II.F. For the application of these requirements, please refer to Chapter III.H, which details the profile listing on the TPBM.

#### 4. Regulatory Process Map—Profile Listing on the TOKYO PRO-BOND Market

Figure 12 shows the regulatory process for the listing of bonds and notes on the TPBM. The process consists only of the listing application for the TPBM and approval by the TSE.



For a detailed description of the listing process and eligibility criteria for these securities and their issuers, please refer to Chapter III.H.

## H. Disclosure Requirements for the Public Offering of Securities

The disclosure requirements for bonds and notes issued in the Japan bond market via a public offering are prescribed in the FIEA, and further detailed in the relevant Cabinet Ordinance. Distinctions are made in the regulations between the initial disclosure—in the form of the SRS—and the continuous disclosure requirements during the lifetime of the bond or note, as well as the disclosure requirements for foreign issuers.

In contrast, requirements for the disclosure of bonds or notes issuance via private placements are covered in the context of the TPBM (Chapter II.I).

## 1. Initial Disclosure: Securities Registration Statement

To make the information contained in the SRS (有価証券届出書) and its attachments accessible to general investors, the FIEA requires the SRS and its attachments to be filed by the issuer with the Director-General of the Kanto Local Finance Bureau of the MOF (e.g., if the bond or note issuance is to occur in Tokyo) or the relevant Local Finance Bureau, and for such filings to remain open for public inspection for a period of 5 years. In addition, the issuer must keep such documents at its head office and principal branch offices, and make them available for public inspection.

Once the SRS is filed with the relevant Local Finance Bureau, solicitation can be made; but before the securities are acquired by investors, the registration must have become effective. The registration becomes effective generally after a 15-day waiting period has elapsed from and excluding the day of filing.

In many cases, if the issuer is already filing continuous disclosure documents in relation to other securities issued, the waiting period is shortened to 7 days. If, prior to the effective date of the registration, any changes occur with respect to any material fact that should be stated in the SRS, or if there arises any situation prescribed by a relevant Cabinet Ordinance calling for the modification of the contents of the registration documents, the registrant should file an amendment to the SRS.

The SRS is generally composed of three sections: (i) Information Concerning Securities, (ii) Information Concerning Issuer, and (iii) Information Concerning Guarantor and Special Information. For the SRS for foreign-specified securities referenced in section 3, Information Concerning the Legal System of the Home Country of the Issuer must also be disclosed. In addition to the disclosure requirements, there are regulations concerning securities transactions under the FIEA designed to ensure fair trading.

## 2. Methods of Filing the Securities Registration Statement

The SRS may be filed using one of the methods described below.

### a. Complete Full Disclosure SRS Method

The SRS must be filed by the issuer with the Director-General of the relevant Finance Bureau before the commencement of a public offering.

The issuer may instead choose one of the other methods—(b), (c), or (d)—provided the issuer satisfies certain conditions, as outlined.

### b. Documents Embedded into SRS Method

Companies that filed an annual securities report for the previous year may embed annual securities reports, semiannual securities reports, or quarterly securities reports and their amendments into the SRS to avoid duplicate filing.

### c. Documents Incorporated into SRS by Reference Method

Companies that already list their shares on the stock exchanges, or bonds and notes on OTC markets, and also satisfy additional requirements under a Cabinet Ordinance, may make reference in the SRS to the documents identified in (b), or those eligible

documents already submitted for disclosure for the other securities, rather than completing the entire SRS document.

#### *d. Shelf Registration Method*

Issuers that qualify to use the Reference Method can also use Shelf Registration to render their issue more cost-efficient and timely. Pursuant to a Cabinet Ordinance, any issuer who satisfies the requirements for registration by the Reference Method may register proposed offering(s) by filing with the relevant Finance Bureau a Shelf Registration Statement setting out the period during which the securities are intended to be offered, the kind of securities, and the proposed total amount of offering.

The Shelf Registration becomes effective after a shorter period (usually 7 days) than the period after filing the SRS. Once the Shelf Registration becomes effective, no individual SRS need be filed for the offering of any part of the securities covered by the Shelf Registration, but the registrant should file with the relevant Finance Bureau (i) an amendment to the Shelf Registration each time a new disclosure document such as a quarterly securities report is filed, and (ii) a supplement to the Shelf Registration setting out the amount of offering and other terms of the offering when new securities issued from the Shelf Registration are priced.

The Shelf Registration expires upon the last day of the intended period. If, prior to such expiry, the offerings of the total amount registered have been completed, the registrant should file a Shelf Registration Withdrawal Statement with the relevant Finance Bureau.

If, during the effective period of the Shelf Registration, a certain situation arises as prescribed by the FIEA and Cabinet Ordinance, such as new disclosure documents needing to be incorporated, the registrant should file an Amendment SRS. No such amendment can be made to increase the total amount of offerings, change the proposed period of offerings, or change the kind of securities subject to the registration.

Special provisions are made with respect to the Shelf Registration Method for commercial paper.

### **3. Forms of Initial Disclosure for Nonresident Issuers (Public Offerings)**

A number of Cabinet Office Ordinances stipulate relevant notifications and the forms of initial disclosure by foreign issuers; these are provided in the following in the context of the necessary disclosure subjects.

#### *a. Disclosure of Information Concerning Corporations*

The Cabinet Office Ordinance on the Disclosure of Corporate Affairs, etc. (企業内容等の開示に関する内閣府令) stipulates the necessary notifications and disclosure of public offerings or secondary distributions of securities, and the necessary information about a foreign corporation to be submitted.<sup>8</sup>

<sup>8</sup> See <http://law.e-gov.go.jp/htmldata/S48/S48F03401000005.html> (In Japanese; latest amendment date: 25 September 2015); <http://www.japaneselawtranslation.go.jp/law/detail/?id=2341&vm=04&re=02> (In English; translation date: 3 February 2010).

When a foreign company is issuing bonds in Japan, the appointment of an Issuer's Agent is necessary in most cases.

*b. Disclosure of Information Concerning Issuers of Foreign Government Bonds*

The Cabinet Office Ordinance on Disclosure of Information, etc. on Issuers of Foreign Government Bonds, etc. (外国債等の発行者の内容等の開示に関する内閣府令) details the notifications and disclosure of public offerings or secondary distributions of securities on issuers of foreign government bonds.<sup>9</sup>

*c. Provision and Publication of Foreign Securities Information*

The Cabinet Office Ordinance on the Provision and Publication of Information on Securities (証券情報等の提供又は公表に関する内閣府令) details the required information on securities issued by the foreign issuer in markets outside Japan (foreign securities). The relevant Articles (Articles 12–17) are contained in Chapter III (Provision and Publication of Foreign Securities Information) of the Cabinet Ordinance and are referenced as listed below:<sup>10</sup>

Article 12: Contents of Foreign Securities Information

Article 13: Cases Where the Provision or Publication of Foreign Financial Information Is Not Required

Article 14: Persons Equivalent to Those Who Have Entrusted the Custody of Securities

Article 15: Cases Where an Event That May Have a Material Influence on Investors' Investment Judgments Has Occurred

Article 16: Cases Deemed to Be Cases Where Protection of Investors Would Not Be Impaired

Article 17: Method of Provision or Publication of Foreign Securities Information

#### **4. No Disclosure Requirements for Exempted Securities**

JGBs, municipal bonds, bonds issued by judicial persons pursuant to special law, capital contribution certificates issued by a corporation established by a special law, beneficial certificates of loan trusts, bonds guaranteed by the Japanese government, and bonds issued by an international organization of which Japan is a member (e.g., International Bank for Reconstruction and Development [IBRD] bonds and Asian Development Bank [ADB] bonds) are exempted from the registration and continuous disclosure requirements described in this section.

<sup>9</sup> See [http://law.e-gov.go.jp/cgi-bin/idxselect.cgi?IDX\\_OPT=2&H\\_NAME=&H\\_NAME\\_YOMI=%82%a0&H\\_NO\\_GENGO=H&H\\_NO\\_YEAR=&H\\_NO\\_TYPE=2&H\\_NO\\_NO=&H\\_FILE\\_NAME=S47F03401000026&H\\_RYAKU=1&H\\_CTG=1&H\\_YOMI\\_GUN=1&H\\_CTG\\_GUN=1](http://law.e-gov.go.jp/cgi-bin/idxselect.cgi?IDX_OPT=2&H_NAME=&H_NAME_YOMI=%82%a0&H_NO_GENGO=H&H_NO_YEAR=&H_NO_TYPE=2&H_NO_NO=&H_FILE_NAME=S47F03401000026&H_RYAKU=1&H_CTG=1&H_YOMI_GUN=1&H_CTG_GUN=1) (In Japanese; latest amendment date: 25 September 2015); <http://www.japaneselawtranslation.go.jp/law/detail/?id=2598&vm=04&re=02> (In English; translation date: 5 February 2010)

<sup>10</sup> See <http://law.e-gov.go.jp/htmldata/H20/H20F10001000078.html> (In Japanese; latest amendment date: 15 May 2015); <http://www.japaneselawtranslation.go.jp/law/detail/?id=2063&vm=04&re=02> (In English; translation date: 2 June 2010)

## 5. Continuous Disclosure Requirement

Any (i) issuer of securities listed on any financial instruments exchange, (ii) issuer of securities that were subject to the registration requirement with respect to their public offering for initial issue or sale, and (iii) corporation whose number of shareholders at the end of any of the past 4 business years was 1,000 or more is generally required to prepare and file with the relevant Finance Bureau an annual securities report and quarterly securities report in the case of (i) (limited to the issuers of shares), or a semiannual securities report in the case of other issuers every year, and, from time to time, an extraordinary report. In the case of (i) (limited to the issuer of shares), an internal control report is also required. This is collectively referred to as the Continuous Disclosure Requirement as stipulated by the FIEA.

Such a Continuous Disclosure Requirement ceases when the listed securities are delisted—but as long as the company exists and outstanding shareholders exist, the issuer may have to continuously submit annual and semiannual securities reports—or upon obtaining the approval of the FSA when the issuer goes into liquidation or suspends its business for an extended period of time, or if the number of holders of the securities which were sold in the public offering for initial issue or sale is reduced to less than 25 or under certain circumstances set out in the Order for Enforcement.

Any issuer subject to the continuous disclosure requirement should prepare an annual securities report in the prescribed form within 3 months after the end of each of business year (in the case of foreign governments or corporations, within 6 months) and file the same with the Finance Bureau as provided in Article 24 (1) of the FIEA, for each year as prescribed by the Cabinet Office Ordinance.

If the business year of the issuer is 1 year, the issuer must generally prepare a semiannual securities report in the prescribed form covering the first 6 months of each business year and file it with the relevant Finance Bureau within 3 months from the end of such a 6-month period as the Continuous Disclosure Requirement. If the issuer is a company whose shares are listed on a securities exchange in Japan, the issuer must file a quarterly securities report instead of a semiannual securities report within 45 days from the end of such a quarterly period. The issuer also has to file an internal control report together with an annual securities report once every year.

When a certain important event occurs with respect to an issuer subject to the Continuous Disclosure Requirement, it should prepare and file with the Finance Bureau an extraordinary report without delay.

The annual securities report, semiannual securities report, quarterly securities report, internal control report, and extraordinary report are to be made available for public inspection via the Internet through a system named the Electronic Disclosure for Investors' Network (EDINET).<sup>11</sup>

The FIEA contains provisions similar to those applicable to the SRS for amendments to the annual securities report, semiannual securities report, quarterly securities report, internal control report, and extraordinary report, as well as relevant parties' liabilities resulting from material misstatements and omissions.

In addition, issuers of listed securities are subject to various disclosure requirements prescribed by the relevant securities exchange, such as those for timely disclosure or material events.

<sup>11</sup> See <http://disclosure.edinet-fsa.go.jp/EKW0EZ1001.html?lgKbn=1&dflg=0&iflg=0>

## 6. Electronic Disclosure for Investors NETWORK

Disclosure documents, such as the SRS, are effectively filed using EDINET, which is an electronic system designed to accept disclosure documents filed under the FIEA. EDINET content is basically available in Japanese, but a search in English is possible. Documents written in English are marked with an indicator (“English”) on the left side of the name of the document submitted.

This system, which has digitized former paper-based disclosure procedures, was developed to make the securities market more efficient by reducing the reporting burden on companies and making it easier for investors to access company information.

Under this system, disclosure documents are filed online with the Finance Bureau and are made available to the public through the Internet. By using this system, issuers do not have to go to the Finance Bureau in person to file their disclosure documents. Furthermore, investors can browse through all of the filed documents on the Internet and access issuer information more easily.

The programming languages used to prepare the information required in the disclosure documents are HTML and XBRL.

## I. Establishment of the TOKYO PRO-BOND Market

The TPBM represents the professional bond market in Japan, in contrast to the practices and the requirements for the public offering market discussed earlier. This section highlights the need for (and the purposes and processes behind the establishment of) the TPBM (Figure 13).<sup>12</sup>

### 1. The Need for a Market for Professional Investors

In a statement released on 21 December 2007, the FSA explained the need for a dedicated market for Professional Investors and the objective for the new professional market. The excerpt provided below best relates what led to the creation of the TPBM.<sup>13</sup>

#### I. Creation of reliable and vibrant markets

##### (ii) Development of a framework for markets intended for professionals

In other countries, markets with a high degree of freedom intended for Professional Investors are expanding, such as the AIM (Alternative Investment Market) in the United Kingdom and the market based on Rule 144A of the United States (US) Securities and Exchange Commission (SEC). This trend has been intensifying the international competition in creating attractive markets.

<sup>12</sup> Japan Exchange Group. TOKYO PRO-BOND Market. <http://www.jpx.co.jp/english/equities/products/tpbm/outline/index.html>

<sup>13</sup> Financial Services Agency (FSA). 2007. *Statement on the Development of Markets for Professional Investors: Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets*. Tokyo

Investor protection, including through disclosure, will continue to gain greater importance in Japan. However, it is also essential to differentiate Professional Investors from general investors and allow the former more freedom in transactions under the principle of self-responsibility, from the viewpoints of making the country's financial and capital markets more vibrant and strengthening their international competitiveness.

Measures will be taken to establish markets among professionals that allow a high degree of freedom in transactions. The aim of this work is to raise the attractiveness of Japan's financial and capital markets as the places for financing and investment by expanding financing opportunities for foreign companies and Japanese start-ups in Japan, and to promote financial innovation through competition among Professional Investors. To this end, a framework utilizing the existing systems, including of private offerings to professionals, will be put in place by the end of 2008. This will be followed by the development of a new framework, based on new disciplines, for an exchange market, the participants of which will be expanded to include Professional Investors.

As announced, in 2008, the FSA revised the FIEA as part of its plan to enhance the competitiveness of Japan's financial and capital markets, establishing the legal framework for markets oriented toward Professional Investors, including an offering system for Specified (Professional) Investors and Specified Financial Instruments Markets as stipulated in the FIEA. This provided the legal framework for the establishment of a new securities market, which is different from the general public offering system and has a wider range of investors than, for example, the US Rule 144A market.<sup>14</sup>

An extract from the FSA's Newsletter in January 2008 explained the salient details of the law and regulations enacted regarding the establishment of new markets intended for Professional Investors.<sup>15</sup>

### 1. Introduction (excerpt)

Following the enactment and promulgation on 6 June and on 13 June of 2008, respectively, of the Act for the Amendment of the Financial Instruments and Exchange Act (hereinafter referred to as the Amendment Act), which includes provisions for institutional improvements necessary for strengthening Japan's financial and capital markets, the government decided, at a cabinet meeting on 2 December 2008, the Cabinet Order Concerning the Establishment and Revision of Relevant Cabinet Orders Related to the Enforcement of the Act for the Amendment of the Financial Instruments and Exchange Act and promulgated it on 5 December.

The key points of the revisions of the Cabinet Orders and Cabinet Office Ordinances that entered into force at this time are as follows:

<sup>14</sup> The US Rule 144A market is a market for private offerings exempted from disclosure under Rule 144A, which was introduced to the Securities Act, 1933 by the US Securities and Exchange Commission in 1990. When bonds and other instruments targeting Professional Investors are issued in US markets, rather than employing public offerings, which entail stringent legal standards for document disclosure, it is normal to follow Rule 144A by making the offering exclusively to qualified institutional buyers. In the US, the Rule 144A market is available as a domestic professional investor market. The re-sale of such offerings within the US is on principle restricted to qualified institutional buyers under Rule 144A.

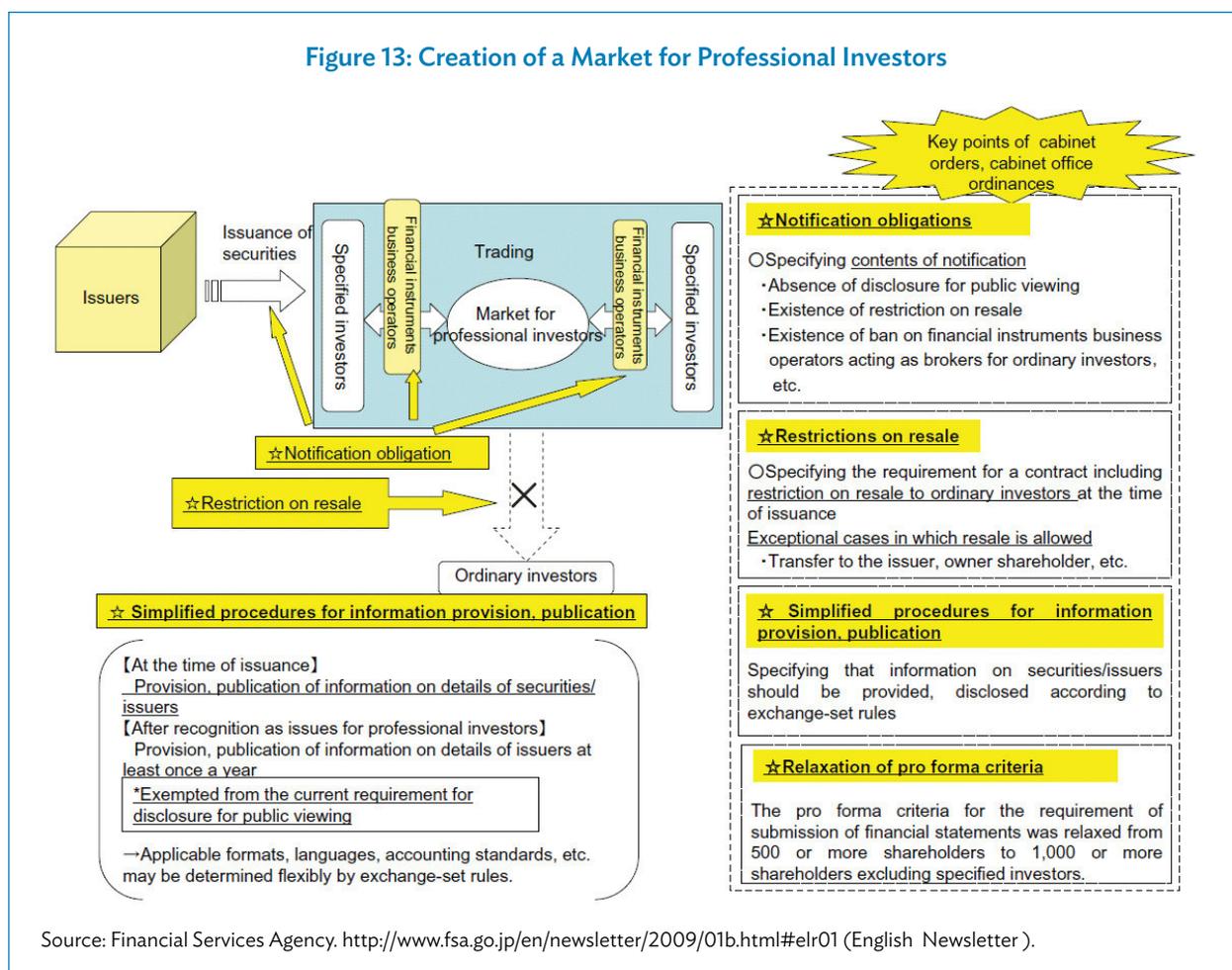
<sup>15</sup> Financial Services Agency (FSA). 2008. Cabinet Orders and Cabinet Office Ordinances Concerning the 2008 Amendment of the Financial Instruments and Exchange Act. *FSA Newsletter*. Tokyo. January.

## 2. Establishment of new markets intended for Professional Investors (excerpt)

The Amendment Act puts in place an institutional framework for new markets intended for Professional Investors (specified investors), and instead of imposing the current disclosure rules requiring the availability of information for public view as a prerequisite on issuers which are to be listed on such new markets, it allows such issuers to use simplified procedures for the provision and publication of information.

The Cabinet Orders and Cabinet Office Ordinances that entered into force at this time include the following provisions for institutional improvements:

- (i) Specifying the details of the obligation for the notification of solicitation activities and transactions related to financial instruments intended for Professional Investors as well as the details of the restriction on the resale of such financial instruments that is aimed at preventing resale to ordinary investors
- (ii) Specifying that the contents of information regarding securities and issuers and the method of information provision should be based on rules set by exchanges.



In addition, the taxation system was reformed in FY2010 to remove the tax on revenues from domestic bonds held by nonresidents. The creation of the TPBM and removal of taxes addressed measures in the legal and taxation systems, respectively, that had previously separated domestic bonds from Eurobonds and other international bonds in Japan, and led to a new phase in the Japanese bond market in which the choice of issuance of either domestic or international bonds came down to the circumstances and/or preferences of issuers and investors alike.

## 2. The TOKYO PRO-BOND Market as a Professional Investors Market in Japan

Following the introduction of the necessary legal framework through the FIEA, the financial instruments exchanges were allowed to create a market in which the listed securities may not be transferred to any person other than specified investors or certain nonresidents of Japan. Such a financial instruments exchange market is defined as a specified financial instruments exchange market in the FIEA.

Securities that are listed on a Specified Financial Instruments Exchange Market but not listed on a regular financial instruments exchange market are defined as Specified Listed Securities in the FIEA. Holders of Specified Listed Securities may not transfer them to any person other than specified investors or certain nonresidents of Japan, whether at the financial instruments exchange or in the OTC market, unless the issuer of the securities files an SRS in advance.

Table 11 compares the terms used in the FIEA with the ones used in actual market practice that are referenced above and throughout this guide.

**Table 11: Comparison of Financial Instruments and Exchange Act Terms with Market Practice Terms**

Financial Instruments and Exchange Act Term	Market Practice Term
Private offerings to professionals	Private Placement for Professional Investors (PP for PI, or Offer to PI)
Specified Financial Instruments Exchange Market	TOKYO PRO-BOND Market (TPBM)
Specified Investors	Professional Investors
Specified Listed Securities	TPBM listed PRO-BOND

Source: ABMF SF1.

Under these provisions, the JPX Group established the listing system as outlined below for bonds and notes on the TPBM in May 2011. The TPBM is operated by the TSE as a market distinct from the TOKYO PRO market, which focuses on the listing of equities.

The TPBM is the single market in Japan for listed programs or listed bonds and notes under the appropriate extent of disclosure aimed at Professional Investors as a Specified Financial Instruments Exchange Market pursuant to Article 2 (32) and Article 117 (2) of the FIEA.

With the TPBM being a Specified Financial Instruments Exchange Market, its member securities companies are not allowed to deal with investors other than Professional Investors when soliciting for, or transacting in, bonds or notes listed on the TPBM.

### 3. Basic Principle of the TOKYO PRO-BOND Market

The relevant articles of the FIEA stipulate the exclusions of the Offer to PI and PSD to PI from the definitions of Public Offering and Secondary Distribution. Under these Offer to PI and PSD to PI schemes introduced in 2008, participation in the TPBM only requires the issuer to provide concise information, through the SSI, aimed at the professional market. The objective is to deal with the solicitation that does not correspond to a public offering or a secondary distribution, which require full statutory disclosure.

Hence, the basic principle of the TPBM concept can be described as follows: the issuers and the intermediary financial institutions incur the obligation to provide Professional Investors with certain specified information (in the form of the SSI) required by the TSE, in exchange for being exempted from the strict statutory disclosure requirement of filing the SRS, etc. under Article 2 (31), (32); Article 2 (3) (ii) (b); and Article 2 (4) (ii) (b) of the FIEA.

For further detailed information on the actual listing requirements imposed by the TSE and the listing process on the TPBM, please refer to Chapter III. H.

## J. Participation of Nonresidents in the Japan Bond Market

This section covers the general considerations of nonresident, or foreign, issuers and investors in the Japan bond market, as well as specific requirements that may exist for nonresidents at market entry and exit.

### 1. Nonresidents Are Treated as Professional Investors

The Professional Investor System under the FIEA classifies “investors [or] customers eligible to be protected by way of regulation” and applies regulation in accordance with the investor or customer classes to ensure regulatory flexibility. Therefore, “investors not eligible to be protected by way of regulation” are not covered by the Professional Investor System in the first place.<sup>16</sup>

As the FIEA is basically intended to protect residents in Japan, foreign investors who are nonresidents are presumed to not necessarily be eligible for protection. However, foreign investors (nonresidents) are presumed to be eligible for protection and to be covered by the Professional Investor System when Financial Instruments Business Operators, such as securities companies, sell products to them or solicit them as customers in Japan.

When these Financial Instruments Business Operators conduct transactions with foreign juridical persons in Japan, it is presumed to not always be necessary to apply various investor protection laws. In light of this, as well as for the convenience of foreign investors (nonresidents), foreign juridical persons among foreign investors (nonresidents) are treated as “Professional Investors who may change their status to general investors as an option.”<sup>17</sup>

On the other hand, individual foreign investors are treated in the same way as domestic individual investors. However, with regard to individuals who are managers of partnerships

<sup>16</sup> Excerpt (partly amended by ABMF SF1) from Financial Services Agency. 2015. *FAQ on Financial Instruments and Exchange Act: Section 6*. [http://www.fsa.go.jp/en/laws\\_regulations/faq\\_on\\_fiea.pdf](http://www.fsa.go.jp/en/laws_regulations/faq_on_fiea.pdf)

<sup>17</sup> Government of Japan. 1948. *Financial Instruments and Exchange Act Article 2-31 (iv), and Article 23 (x) of the Definition Ordinance*. Tokyo.

based on foreign laws and regulations, it is presumed to be difficult to check whether they meet the requirements for Professional Investors who may change their status to general investors as an option given the diverse types of partnerships based on foreign laws and regulations. Therefore, in order to facilitate the conduct of practical affairs and for other objectives, such individuals are not treated as “Professional Investors who may change their status to general investors as an option.”<sup>18</sup>

Individuals who are managers of anonymous partnerships, those who are operating partners of partnerships as specified by the Civil Code, or those who are involved in decisions on the execution of important business operations of limited liability partnerships and execute them are treated as “Professional Investors who may change their status to general investors as an option under certain conditions.”<sup>19</sup>

## 2. No Specific Limitations for Nonresidents

There are no restrictive regulations or limitations for nonresidents, which in this context is taken to mean foreign juridical persons, preventing them from being issuers of and investors in bonds and notes in the Japanese market.

## 3. Market Entry Requirements for Nonresidents

### a. Foreign Issuers

Nonresident (foreign) issuers can issue bonds and notes in Japan. The issuance of JPY-denominated bonds and notes is not subject to approval from the government. The issuance of bonds and notes denominated in a foreign currency is also not subject to approval from the government. A public offering of bonds or notes issued by nonresidents are subject to statutory disclosure requirements under the FIEA.

In cases of nonresident issuers offer debt securities for sale to Japanese investors, the issuer may need to appoint a so-called Representative in Japan in order to be able to distribute information on bond and note issues, and to be available for any queries or information requests from investors.

With respect to a private placement of newly issued securities for QIIs, see also Chapter III.K and Chapter III.E. If the issuer of the securities is a foreign entity, the issuer is required to appoint an issuer’s agent who is a resident of Japan, according to Article 1-3 of the Cabinet Office Ordinance on Disclosure of Information, etc. on Issuers of Foreign Government Bonds (外国債等の発行者の内容等の開示に関する内閣府令). The objective of this ordinance is to identify if there is a breach of obligation of the notice relating to the restrictions on resale and, ultimately, to ensure that there is no breach. This ordinance is applicable just for the QII-PP and not applicable for TPBM.

The regulations and practices of the TPBM do not distinguish between resident and nonresident issuers. The scope of issuers on the TPBM includes

<sup>18</sup> Government of Japan. 1948. *Financial Instruments and Exchange Act Article 34-4 (1) (i), and Article 61 (2) of the Financial Instruments Business Ordinance*. Tokyo.

<sup>19</sup> Government of Japan. 1948. *Financial Instruments and Exchange Act Article 34-4 (1) (i), and Article 61 of the Financial Instruments Businesses Ordinance*. Tokyo.

- foreign corporations,
- foreign financial institutions,
- sovereign and government-sponsored issuers,
- Japanese corporations,
- Japanese public entities (e.g., local governments).

All eligible issuers may utilize note issuance programs as a form of bond and note issuance.

*b. Foreign Investors*

Nonresident (foreign) investors may invest in any bonds or notes issued in Japan without any restrictions.

#### **4. Market Exit Requirements for Nonresidents**

*a. Foreign Issuers*

There are no specific market exit requirements for foreign issuers.

*b. Foreign Investors*

There are no market exit requirements for foreign investors.

#### **5. English Disclosure for Nonresident Issuers**

*a. General Disclosure in English*

As far as the information disclosure in English in the public debt market is concerned, by the amendment of the Securities and Exchange Act, 2005 and the subsequent revision of the FIEA in 2011, if the issuer is a foreign company, it is permitted for the issuer to submit the continuous disclosure documents in English with the public inspection in a foreign country based on the foreign disclosure rules (FIEA Article 24 (8)).

*b. Listing with English Disclosure on the TOKYO PRO-BOND Market*

On the other hand, concise information disclosure in English for the TPBM professional investor market is also available under the applicable TSE Rules. Foreign companies are able to raise funds without a disclosure of relevant information in Japanese. In addition, it is also possible that Japanese domestic issuers conduct information disclosure in English.

Foreign issuing entities (e.g., corporations, organizations) likewise stand to benefit from the added convenience. Whereas conventional Samurai Bond issuance requires Japanese-language full disclosure, the TPBM allows concise English-language disclosure or a combination of the two.

A foreign issuing entity may decide to present disclosure materials in Japanese and English at the time of the issuance and later follow with English-language disclosure. However, it would be necessary to take measures to ensure that investors are clear about the disclosure language being adopted by, for example, letting them know at the time of issuance that subsequent disclosure will be conducted only in English. Also, an

issuing entity may use both Japanese and English in the same disclosure material for the sake of convenience of both the issuer and the investor.

The TSE's Special Regulations of Securities Listing Regulations Concerning Specified Listed Securities, Rule 202 states the following:

When an entity carrying out program listing (where the scheduled issuance period contained in the Program Information announced by such entity has passed, excluding such entity; the same shall apply hereinafter), an initial listing applicant (limited to an entity which applies for initial listing of a bond; the same shall apply hereinafter in this part), or an issuer of a listed bond prepares material for disclosure, it must use either the English language or the Japanese language, or both languages.

Domestic and foreign investors will benefit from the increased variety of securities in the Japanese market because more domestic and overseas issuers will be able to issue in Japan through the TPBM. Overseas investors will find it easier to invest in the Japanese market thanks to increased disclosure in English.

## K. Regulations on Credit Rating Agencies

This section covers the regulations and requirements applicable to credit rating agencies (CRAs) and their business. For the application of credit ratings in the issuance process of bonds and notes in the TPBM, please refer to Chapter III.L.

Credit ratings were introduced in Japan in the 1980s. Since then, it has become general practice in the issuing of and investing in corporate bonds. After the 1996 abolishment of the “eligibility standards”—the policy which excluded bonds that did not meet the eligibility standards established by the market participants—credit ratings have not been a regulatory requirement for bond issuances. However, credit ratings have been prevailing along with the growth of the corporate bonds market (see also Chapter III.L).

In 1992, the MOF started the designation system of the CRAs. However, following the global financial crisis, there were significant controversies about the regulating of CRAs. A new regulatory system followed in Japan: the Amendment of the FIEA, which was put in force in April 2010, established a registration system for CRAs.<sup>20</sup> The registered CRAs have since been supervised by the FSA. The purpose and process of the introduction of the registration system is explained in Figure 14, and the Guidelines for the Supervision of CRAs are summarized in Figure 15.<sup>21</sup>

The registered CRAs are subject to a number of requirements, including the (i) duty of good faith; (ii) duty to maintain an operational management system that prevents conflicts of interest and ensures the fairness of the credit rating process; (iii) prohibition on giving a credit rating to a security that they hold; and (iv) the duty to disclose information, including to prepare and make available for public inspection the policies for credit ratings and the documents for public release and explanation.

<sup>20</sup> Financial Services Agency. 2010. *Financial Instruments and Exchange Act Related to Regulation on Credit Rating Agencies*. <http://www.fsa.go.jp/en/news/2010/20100331-4/02.pdf>

<sup>21</sup> Financial Services Agency, Securities Business Division Supervisory Bureau. 2014. *The Guidelines for Supervision of Credit Rating Agencies*. <http://www.fsa.go.jp/en/refer/guide/rating.pdf>

Registered CRAs in Japan as of 31 March 2016 include the following:

- Fitch Ratings Japan Limited
- Japan Credit Rating Agency, Ltd. (JCR)
- Moody's Japan K.K. Moody's SF Japan K.K
- Rating and Investment Information (R&I)
- Standard & Poor's Ratings Japan K.K. / Nippon Standard & Poor's K.K.

Bond issuers shall note ratings in the Securities Registration Statement (SRS) and its attachments and prospectus or offering circulars, and indicate ratings from registered CRAs as such. Financial instruments business operators, such as securities firms, have the obligation to explain whether the ratings are from a registered CRA or not and other required matters.

In soliciting customers, financial instruments operators, such as securities companies, shall not use the credit ratings provided by unregistered CRAs without informing customers of (i) the fact that those CRAs are not registered and (ii) the significance and limitations of credit ratings.

CRAs shall provide or make available to the public the credit ratings it determined without delay after the determination or withdrawal of such credit ratings by posting them on its free website with statutory disclosure items under Japanese laws and ordinances.

A foreign CRA is an unregistered CRA, even if it belongs to the same group of a registered CRA. In the Cabinet Ordinance related to the CRA regulations, however, there is the easing explanation rule that admits to feature the name and registered number, etc., of the registered group company, if the group and the unregistered company fulfill the required conditions about the quality and simultaneity of publicized information and rating methodology, etc.

Figure 14: Introduction of Regulation for Credit Rating Agencies

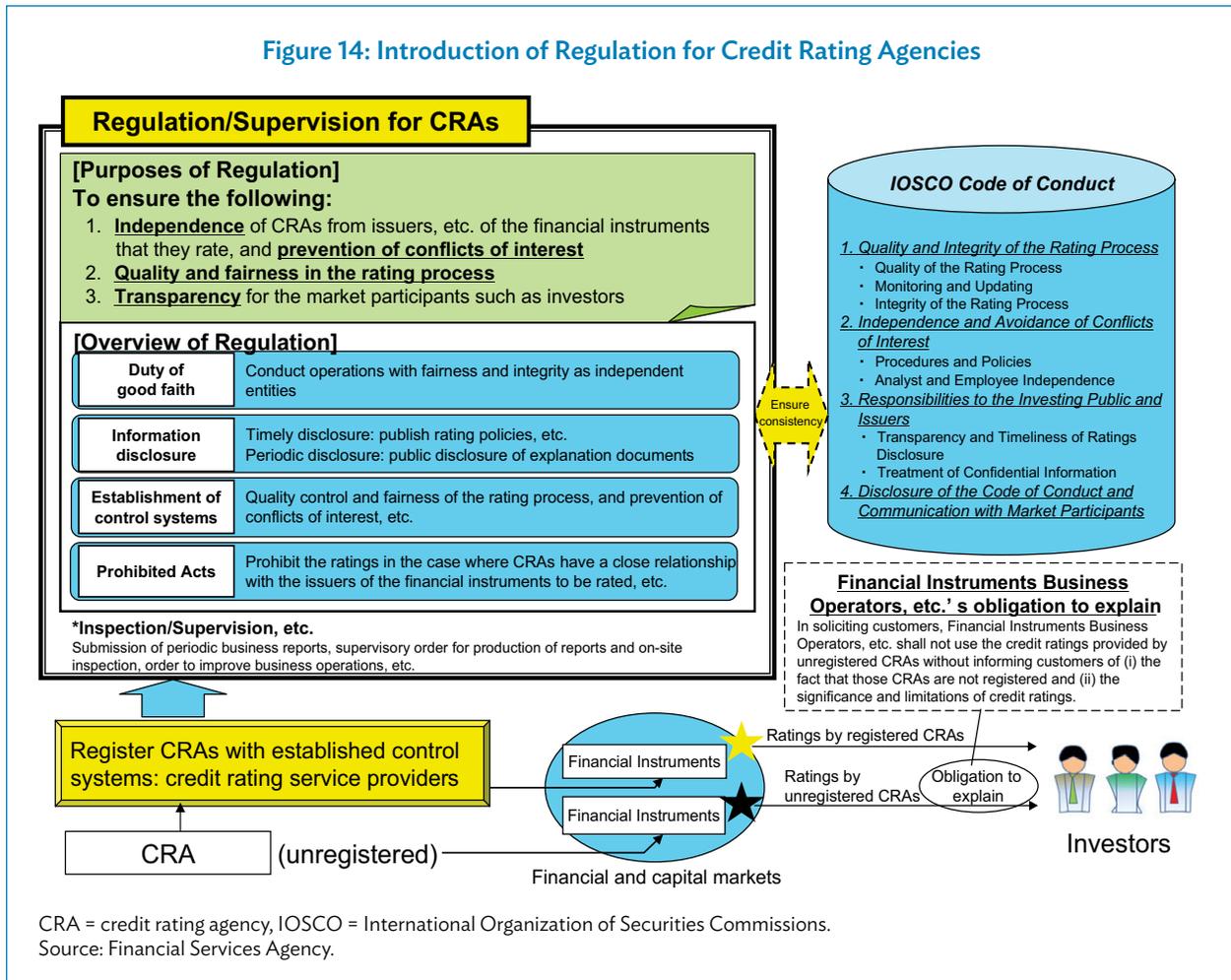
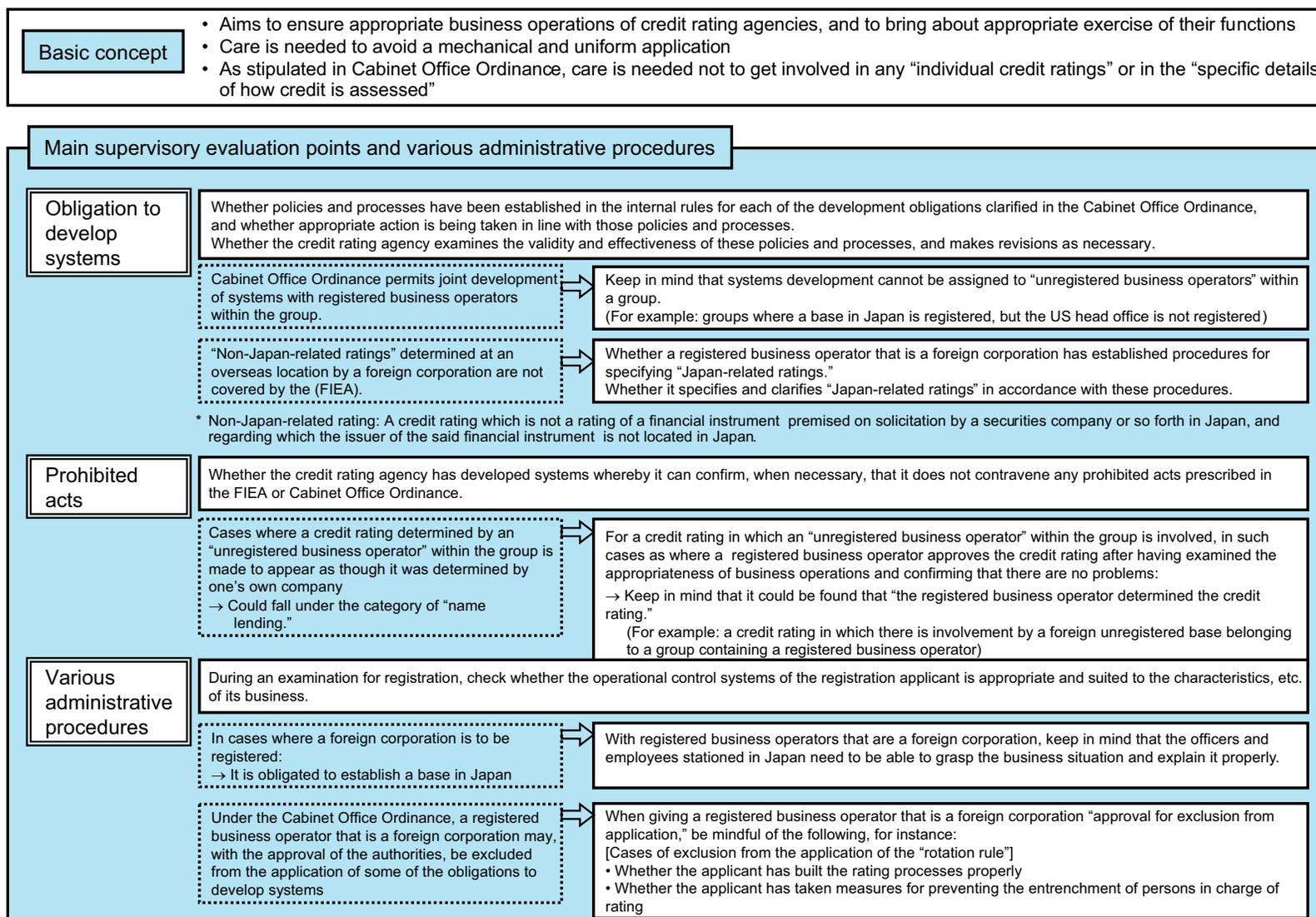


Figure 15: Summary of Guidelines for Supervision of Credit Rating Agencies



Source: Financial Services Agency.