

Major Issues and Key Points in the Past Screenings of Registration and License for Operating Financial Businesses

1. Major issues and key points in the past registration screening

Financial Instruments Business Operator (hereinafter, “operator”)

- The FSA/local financial bureaus confirm the contents of the operator’s business and check whether the operator ensures adequate staffing and organizational structure to conduct its business properly.
 - First, the contents of the operator’s intended business must be clear.
 - Based on the contents of the operator’s intended business,* the FSA/local financial bureaus check whether the operator ensures adequate staffing to conduct its business properly from the perspective of such as investor protection.
- *For instance, adequate staffing is required, considering the nature of the business, such as where services are provided to individual investors and where services are provided using the operator’s self-developed IT system.

Issuer of Prepaid Payment Instruments for Third-Party Business (hereinafter, “issuer”)

- The FSA/local financial bureaus check business contents (e.g. issuance scheme, validity terms, distinction of prepaid payment instruments between what is provided with compensation and without it). The FSA/local financial bureaus also check the development status of business operational systems and internal rules.
- IT System management and management of outsourcing contractors
 - For IT system management, the FSA/local financial bureaus check whether the issuer clarifies which department is responsible for system management; whether its IT system management is functioning effectively; and whether its internal rules and basic policies of IT system risk management are developed.
 - The FSA/local financial bureaus also check the issuer’s management of outsourcing contractors based on the issuer’s selection criteria, regarding the following points: whether the outsourcing contractor appropriately manages customer information; whether the outsourcing contractor develops a structure enabling it to promptly report to the issuer in cases of a data leak and other accidents; and whether the issuer assesses and selects its outsourcing parties.

Fund Transfer Service Provider

- A definition of “exchange transactions” conducted by fund transfer service providers is not stipulated in statutes but is understood based on a Supreme Court case in 2001.* Registration as a fund transfer service provider with the competent authority needs to be carried out through case-by-case assessment and examination of respective fund transfer business schemes. Fund transfer service providers provide a variety of fund transfer services and, therefore, ambiguity remains in the procedure to determine whether the intended fund transfer service falls within the definition of the said “exchange transactions.”

*Note: According to the Supreme Court's case, conducting an exchange transaction is accepting and/or conducting an order from the customer to transfer the fund by using the systems between geographically distant parties without physical cash transport. (cf. Decision of the first petty bench of the Supreme Court on March 12, 2001)

- The FSA/local financial bureaus also check whether the financial basis of the fund transfer service provider is ensured.

Small Amount and Short Term Insurance Provider (hereinafter, “insurance provider”)

- The FSA/local financial bureaus confirm business contents and check whether the operator ensures adequate staffing and the construction of an organization and structure for appropriate conduct of business.
- In screening insurance products, the FSA/local financial bureaus check that the product to be sold by an insurance provider is not deemed to be problematic in light of the grounds for refusal of registration (in terms of protection of policyholders, fairness, public policy, excessive underwriting, and accountability).
- The FSA/local financial bureaus check whether the principal shareholders of the applicant are not at risk of affecting the stability of its business.

2. Past cases where application period for a license/registration was prolonged

- Case 1: An applicant outsourced the drafting of application documents to external experts such as consulting firms and is not able to explain the contents of the documents.
- Case 2: An applicant cannot fulfill the legal obligation to ensure adequate staffing and/or corporate structure for appropriate conduct of business (or an applicant cannot make a prima facie showing of such adequate staffing and/or corporate structure).

- Case 3: An applicant has little understanding of its own problems and issues due to a lack of personnel adept in relevant laws and regulations.
- Case 4: The screening procedure takes a while for drafting application documents and/or amendments of the filed documents.
- Case 5: Due to insufficient development of the internal rules/regulations of an applicant, the application procedure takes a while for examination and/or amendments of the filed application documents.
- Case 6: The screening procedure for registration/license requires amendments of the internal rules/regulations and/or the corporate constitution, thereby the company needs approval from its board of directors and/or general shareholders meeting.
- Case 7: A service provider had little understanding of IT system management where the service provider outsourced the management despite the fact that the IT system is critical to its business.

e.g.) Issuer of Prepaid Payment Instrument using system server

- Case 8: It takes some time to fill the gap between the understanding of the consulter and the understanding of the authority as to whether the business scheme of the consulter falls within the scope of financial regulations.

e.g.) Application for registration as a fund transfer service provider takes a while to fill the gap between the understanding of the consulter and the understanding of the authority since fund transfer service providers provide a variety of fund transfer services and, therefore, ambiguity remains in the procedure to determine whether the intended fund transfer service falls within the definition of the “exchange transactions,” whose definition is not stipulated in statutes.

Major issues and key points in the past license screening

Banks

- The FSA checks the business model and development status of the governance system through continuous discussions with the applicant.
- The FSA checks whether a bank is able to maintain stable revenue and a financial base through examination of its business plans such as sales plan and financing plan. For example, the FSA examines whether a bank is expected to achieve current net income within three business years from commencement of the business.

- As for cases of establishment of a foreign bank branch, the FSA checks its funding and investment routes. The purpose is to confirm that the foreign bank branch does not excessively rely on investing in its group affiliates in the other jurisdictions.

Insurance companies

- The FSA checks the business model and development status of the governance system through continuous discussions with the applicant.
- The FSA checks whether an insurance company is able to maintain stable revenue and a financial base through examination of its such aspects of its business plans as the sales plan and financing plan. For example, the FSA examines whether an insurance company is expected to achieve current net income within ten business years (for a life insurance company) or five business years (for a non-life insurance company) from commencement of the business.
- The FSA checks that all insurance products satisfy requirements for policyholders' protection, and that the insurance premium rate is set at a reasonable and appropriate level, but is not unfair or discriminative.