

Specific Cases from Past Applications for New License by Foreign Operators

Summary

Efficient screenings of license were achieved in the two cases below for following reasons:

- the foreign financial institutions and the FSA shared the target date of completing the application for the license;
- the FSA clarified points to be checked with foreign financial institutions; and
- the discussion between foreign financial institutions and the FSA was proceeded efficiently with the cooperation of the foreign financial institutions.

Case 1: Example of foreign bank branch

One summer, a foreign bank contacted the FSA about how it could obtain the license required to establish a Japanese branch during that administrative year. The FSA and the bank agreed on a goal of completing the application for the license by the following spring.

While drafting a statement of reasons, the foreign bank, its consultancy (a law firm) and the FSA communicated closely. The FSA asked them about the progress in developing a management framework for starting services in Japan and responded to inquiries. As the drafting of the statement of reasons for applying for the licence was going on, the FSA recommended the bank to hire a compliance officer for the Japanese branch, who has sufficient qualifications/experience for the work related to legal compliance.

Key points that were checked with the bank

- Whether it had clearly defined the risk management roles for its business division, risk management department and internal control/governance functions based on the “three lines of defence” concept*.
 - * The first line of defence is the front-office divisions, which recognize and manage risks related to their work. The second line of defence is comprised of the risk management and compliance divisions, which support risk management in the first line of defence and verify the effectiveness of its management. The third line of defence is the internal audit division, which verifies and assesses whether the first and second lines of defence are functioning in a valid manner.
- Whether the management of the Japanese branch had sufficient qualifications/experience and whether the management established a system for the branch staff to comply with Japanese laws/ordinances/rules. Whether the compliance officer has sufficient qualifications/experience for the work related to legal compliance.
- Whether a system was in place to ensure legal compliance to address organized

crime acts, such as money laundering.

- Whether channels for raising or managing funds were appropriate (especially whether the branch relied excessively on other branches of the group for fund management). Whether the branch's liquidity risk management relied excessively on the liquidity provision by headquarters.

Although it took a long time for the foreign bank to hire a compliance officer for the Japanese branch (hired about a month before the target date for the completion of the application), the FSA was able to ascertain, through dialogue with the foreign bank, that the management framework of the branch was properly prepared. The FSA thus requested submission of the license application. The issuance of the license was completed in about a month (the FSA was able to issue the license around the target date).

Case 2: Example of foreign insurer, etc.

One summer, a foreign insurance company that did not have a Japanese branch contacted the FSA about their intention to set one up. The FSA agreed with the insurer on a goal of completing the license application in time to open the branch the following spring.

After examining preliminary documents of intended application received from the company, the FSA presented them with issues to further confirm compatibility with the legal screening criteria. The following are the key issues raised at that point.

Key points that were checked with the insurance company

- The FSA needed to examine the rationale and validity of the company's business plan (service plans, etc.) to see if their profitability outlook for the operation was sound, but it was not clear to the FSA what was the basis for the figures used in the business plan.
- The FSA needed to check to see if the branch could maintain the soundness of the operation after obtaining the license to see if the branch would have a valid degree of financial base, but it was not clear to the FSA what the prospects would be for the branch to receive support, such as capital injection from the headquarters, if the branch fell into a situation in which it alone could not maintain its soundness.

After discussions with the company about these points, the FSA:

- received documents showing specific grounds for the unclear figures in the business plan, and
- ascertained a clear demonstration of the company's intention that the headquarters would provide a capital injection if the branch fell into a situation in which it alone would not be able to maintain its soundness.

The FSA thus requested submission of the license application.

As the FSA found no need to correct the submitted application, the FSA issued the license in about two weeks (the FSA was able to issue it around the target date).