

Japanese stock exchanges setting up framework for a remote trading participant system

Resource type: [Legal update](#): [archive](#)

Status: **Published on 02-Apr-2009**

Jurisdiction: [Japan](#)

Atsumi & Partners

Speedread

The Tokyo Stock Exchange has implemented its new remote trading participant system, enabling foreign securities firms to trade securities and derivatives in Japan without needing to establish (or appoint) a presence there, as previously required. However, some issues may remain.

On 9 February 2009, the Tokyo Stock Exchange (TSE) implemented its revised rules to effect the Remote Trading Participant System. The Osaka Stock Exchange (OSE) is currently planning implementation of a similar system. This system enables foreign securities firms to trade on Japanese securities and derivatives exchanges directly from overseas by operating their computer system terminals but without establishing local branches in Japan.

This Remote Trading Participant System is based on a regulatory framework called the Exchange Trading Authorisation regulation, a special exception to the general rule that requires financial instruments business operator to register, under the Financial Instruments and Exchange Law (*Japanese Law No.25 of 1948, as amended*) (FIEL).

The general rule under the FIEL is that no-one can engage in financial instruments business, including securities and derivatives trades on exchanges in Japan, unless they have been registered at the Financial Services Agency of Japan (JFSA) as a financial instruments business operator. To obtain such registration, securities firms must have their business offices in Japan, and registered financial instruments business operators, including foreign securities firms, are subject to requirements for maintaining certain amounts of capital (if engaged in certain types of business including securities and derivatives trades on exchanges) and certain reserves in Japan.

The Exchange Trading Authorisation framework does not impose requirements of the type referred to above. This framework is aimed at boosting Japanese exchanges' competitiveness against foreign exchanges and to enable Japanese exchanges to establish cross-membership relationships with foreign exchanges. The Exchange Trading Authorisation framework was implemented this February in the real market operation rules by the TSE as the Remote Trading Participant System.

One point which may be an issue in operating the Remote Trading Participant System is a requirement for there to be a "representative in Japan". Even though the Exchange Trading Authorisation framework in the FIEL and the TSE's Remote Trading Participant System intend to omit the requirement that foreign securities firms have real business functions in Japan, the Companies Law (*Japanese Law No. 86 of 2005*) has not been changed accordingly. The Companies Law still requires that any foreign company wishing to do business continuously in Japan must appoint a "representative in Japan" who is domiciled in Japan and has been assigned

comprehensive power to take any actions on behalf of the foreign company with regard to its business in Japan.

In addition, such representative in Japan must, under the Exchange Trading Authorisation framework, owe a duty (the breach of which is subject to criminal penalty) to liaise with the JFSA on behalf of the relevant foreign securities firm (including a duty to respond to the JFSA order to submit reports or materials or to allow officials to inspect such reports or materials, and a duty to annually submit to the FSA the foreign securities firms' business report (in Japanese)).

This situation may leave parties (such as Japanese law firms) who would consider accepting the position of representative in Japan in uncertainty about what kind of risk they will take in accepting the position. Such uncertainty needs to be clarified by the JFSA or other authorities to develop the practice of the Remote Trading Participant System.

Resource information

Resource ID: 2-385-5631

Published: 02-Apr-2009

Products: PLC Cross-border, PLC Global Finance, PLC US Law Department

Related content

Topics

Cross-border: finance (<http://www.gslb2.practicallaw.com/topic7-200-1612>)

© Practical Law Publishing Limited 1990-2011 (<http://www.practicallaw.com/0-207-4980>). Terms of use (<http://www.practicallaw.com/9-103-0884>) and privacy policy (<http://www.practicallaw.com/jsp/privacy.jsp>). Subscription enquiries +44 (0)20 7202 1220 or email subscriptions@practicallaw.com The reference after links to resources on our site (e.g. 2-123-4567) is to the PLC Reference ID. This will include any PDF or Word versions of articles.