

ANDERSON MORI & TOMOTSUNE

Financial Services & Transactions Group

MEMORANDUM

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RECENT AMENDMENTS TO THE BANKING LAW

We wish to take this opportunity to provide a brief update to our clients regarding the recent amendments to the Banking Law of Japan (Law No. 59 of 1981, as amended) and other relevant laws by “the Law Amending Part of the Banking Law, Etc.” (Law No. 106 of 2005; the “Amending Law”).

Amendment of Banking Law

The Amending Law was promulgated on November 2, 2005, and will be expected to be in force from April 1, 2006. The Amending Law will open the door for non-bank companies, such as convenience stores and real estate agents, to become agencies of banks in order to diversify the sales channels of banks and improve convenience for customers.

Background

Under the current Banking Law, bank agency regulation is very strict and non-bank companies are virtually prohibited from engaging in bank agency businesses. A non-bank company can be an agent of a bank only in the case where (i) the company is a wholly-owned subsidiary of the bank, and (ii) the company only engages in such agency business (Article 9-3, Paragraph 2, Item 10 of the Enforcement Regulation of the Banking Law). There have been requests from department stores, supermarkets and convenience stores etc. that they be entitled to provide banking services such as opening deposit accounts or making individual loans (loans extended to individuals) on behalf of banks in order to attract more customers. Real estate agents and automobile dealers wish to deal with housing loans and automobile loans of banks in order to respond to customers’ needs for a one-stop service. Also, banks, especially banks which specialize in internet banking businesses and do not have many branches, have requested that such regulations be relaxed so that they can expand their sales channels.

Rules regarding Bank Agency Businesses

The Amending Law includes a definition of a “Bank Agency Business” (“*ginko-dairigyo*”), which means a “business conducting any of the following businesses on behalf of a bank

(Article 2, Paragraph 14 of the amended Banking Law)¹:

- (i) acting as an agent or an intermediary² for the execution of an agreement concerning acceptance of deposits or installment savings etc;
- (ii) acting as an agent or an intermediary for the execution of an agreement concerning lending money or discounting drafts³; or
- (iii) acting as an agent or an intermediary for the execution of an agreement concerning exchange transactions.”

A company or a person who engages in a Bank Agency Business on behalf of a bank (“Affiliated Bank”) is called a “Bank Agent” (“*ginko-dairigyosya*”) (Article 2, Paragraph 15 of the amended Banking Law).

Permission

To be a Bank Agent requires the permission from the Authority⁴ in advance (Article 52-36, Paragraph 1). When the Authority receives an application for a Bank Agency Business, it must make an examination as to whether or not the following standards are satisfied (Article 52-38, Paragraph 1):

- (1) The applicant has a sufficient asset base for the healthy and efficient performance of the Bank Agency Business⁵;
- (2) The applicant, in light of its personnel structure, etc., has the knowledge and experience whereby it can accurately, fairly and efficiently perform the Bank Agency Business and possesses social trustworthiness; and
- (3) The applicant is not recognized as a company or a person that may have difficulty

¹ Under the current Banking Law, not only acting as an agent of a bank for a core business (i.e. (i) acceptance of deposits, (ii) lending of money or (iii) conducting exchange transactions), but also acting as an agent of a bank for an ancillary business such as derivative transactions constitute a bank agency business (Art 8, Paragraph 5 of the Enforcement Regulation of the Banking Law). Under the Amending Law, acting as an agent of a bank for an ancillary business will not constitute a Bank Agency Business.

² Under the current Banking Law, acting as an “intermediary” (*baikai*) of a bank does not constitute a bank agency business.

³ According to the officer of the Non-Bank Finance Companies Office (*kinyukaisya shitsu*) of the Financial Services Agency, which is a competent division of the Law for Regulation of Money Lending Business (Law No. 32 of 1977, as amended) (the “Money Lending Business Law”), the Bank Agent will not require the registration as a money lender pursuant to the Money Lending Business law in the case where the Bank Agent only acts as an agent or an intermediary for its Affiliated Bank. This is because a bank agent acting as an agent or an intermediary of lending money for its Affiliated Bank satisfies the exception of the registration as a money lender that a person which is permitted to engage in a money lending business pursuant to the provision in the law other than the Money Lending Law (Article 2, Paragraph 1, Item 2 of the Money Lending Business Law).

⁴ The “Authority” as used in this memorandum means the Commissioner of the Financial Services Agency or the Director of the competent local finance bureau, as the case may be.

⁵ The required capital amount will be stipulated in the Enforcement Regulation of the Banking Law.

conducting the Bank Agency Business appropriately and surely as a result of engaging in other businesses.

Approval of Other Businesses

A Bank Agent may engage in (i) Bank Agency Businesses, (ii) businesses ancillary to Bank Agency Businesses and (iii) other businesses approved by the Authority (Art 52-42, Paragraph 1). The Authority will not give such approval only in cases where the engagement by the Bank Agent in the expected business may prevent the Bank Agent from conducting its Bank Agency Businesses appropriately and surely (Article 52-42, Paragraph 2). A Bank Agent is deemed to have received approvals for the businesses which are described in the application of a Bank Agency Business when it receives the permission to conduct a Bank Agency Business (Article 52-42, Paragraph 4).

Segregation of Assets

A Bank Agent shall segregate and manage moneys and other assets received from customers in conjunction with its Bank Agency Businesses separately from its own assets (Article 52-43).

Explanation to Customers

A Bank Agent shall explain (i) the corporate name of its affiliated Bank, (ii) whether the Bank Agent acts as an “agent” or an “intermediary” of the Affiliated Bank or (iii) the matters specified in a Cabinet Office Ordinance, to customers in advance (Article 52-44, Paragraph 1). In the case where a Bank Agent acts as an agent or intermediary for the execution of an agreement concerning acceptance of deposits or installment savings etc, the Bank Agent shall provide information which will serve as a useful reference to the depositors (Article 52-44, Paragraph 2).

Prohibited Acts

A Bank Agent is prohibited from conducting the following acts in conjunction with its Bank Agency Business (Article 52-45):

- (i) providing a customer with false information;
- (ii) providing a decisive judgment to the customer with respect to an uncertain matter, or providing information which may mislead the customer;
- (iii) acting as an agent or an intermediary for the execution of an agreement concerning lending moneys or discounting drafts for an Affiliated Bank with a customer on the condition that the customer enters into transactions with the Bank Agent or its closely related party (as specified under a Cabinet Office Ordinance and including its subsidiary) (“Closely Related Party”);
- (iv) acting as an agent or an intermediary for the execution of an agreement concerning lending moneys or discounting drafts for an Affiliated Bank with a Closely Related

Party, knowing the condition of the transaction disadvantage the Affiliated Bank in light of the ordinary condition of the Affiliated Bank's transaction; and
(v) acts stipulated in a Cabinet Office Ordinance which may result in inadequate protection of the customer, or may interfere with the sound and appropriate operation of the Affiliated Bank's businesses.

Accounting

A Bank Agent shall prepare and preserve an accounting book in relation to its Bank Agency Business (Article 52-49). A Bank Agent shall prepare a report in relation to its Bank Agency Business and file the report with the Authority every business year (Article 52-50). A Bank Agent shall place the disclosure documents of its Affiliated Bank or the bank holding company, which is a parent company of the Affiliated Bank, at every branch office of the Bank Agent and provide them for public inspection (Article 52-51).

Inspection and Supervision

The Authority may request a Bank Agent to submit reports or materials, or may enter the premises of a Bank Agent, make inquiries regarding its operation or the status of its assets, and inspect items including its accounting book in the case where the Authority recognizes such requests are necessary in order to achieve the sound and appropriate operation of the Bank Agency Business of the Bank Agent (Article 52-53, Para 1, Para 2).

The Authority may request a Bank Agent to take any required measures, including changing its type and method of business, to the extent necessary to achieve the sound and appropriate operation of the Bank Agency Business of the Bank Agent in light of the operation or the status of the assets of the Bank Agent (Article 52-55).

The Authority may revoke the permission for a Bank Agency Business or suspend all or part of the permission in the case where the Bank Agent fails to satisfy the requisite standards for the permission mentioned above (Article 52-56).

Responsibilities of Affiliated Bank

An Affiliated Bank shall take necessary measures in order to achieve the sound and appropriate operation in relation to the Bank Agency Business of its Bank Agent (Article 52-58).

An Affiliated Bank shall indemnify a customer for his or her losses incurred in relation to the Bank Agency Business of its affiliate Bank Agent, other than in the case where (i) the Affiliated Bank pays considerable attention to the Bank Agency Business and (ii) the Affiliated Bank makes an effort to prevent the occurrence of the losses of the customer in relation to the Bank Agency Business of the Bank Agent (Article 52-59).

Other Major Amendments

The Banking Law has also been amended in other parts as follows:

Inspection and Supervision of Outsourcee

The Authority may request an outsourcee of a bank to provide reports or data concerning the condition of that bank's business or assets to the extent necessary in order to secure the healthy and appropriate operation of the bank (Article 24, Paragraph 2). When the outsourcee of the bank has appropriate reasons, it can refuse to submit the reports or the filing of data (Article 24, Paragraph 3).

The Authority may have its officers enter the premises of the outsourcee, ask questions concerning the condition of the business or its assets, and examine its books and other matters to the extent necessary where the Authority deems such actions are particularly necessary to secure the healthy and appropriate operation of the bank (Article 25, Paragraph 2).

These regulations will come into effect to respond to the increasing trends involving the outsourcing of operations of banks, including their computer operations, to third parties, and will respond to the reported computer system errors caused by such outsourcees.

Joint Foundation of Subordinate Company

Currently, a bank's subsidiary or affiliate which engages in a subordinate business (such as the maintenance of ATMs) must earn no less than 50% of its revenue from the parent bank, its parent bank holding company or its group companies, and therefore establishing a subordinate company with other banks is virtually prohibited.

Under the Amending Law, a bank or a bank holding company may establish a subordinate company with other banks or other bank holding companies (Article 16-2, Paragraph 1, Item 10, Paragraph 6, Article 52-23, Paragraph 1, Item 10, Paragraph 6).

** For further advice or information on this subject, please confer with your usual contact at or any of the partners of the Financial Services & Transactions Group at ANDERSON MORI & TOMOTSUNE.*