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INTERNATIONAL FINANCIAL LAW REVIEW

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INTERNATIONAL FINANCIAL LAW REVIEW

Japan

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Section 1: Basel III implementation

1.1 How advanced is Basel III implementation in your jurisdiction?



The Japan Financial Services Agency (JFSA) has issued the following revised notifications: Notification 19 of 2006 of the Financial Services Agency, as amended, for banks (Bank Notification); and Notification 20 of 2006 of the Financial Services Agency, as amended, for bank holding companies (Bank Holding Company Notification). The Bank Notification and the Bank Holding Company Notifications are collectively referred to as the Notifications. IFSA has also issued the Comprehensive Guidelines for Supervision of Major Banks Etc (Supervisory Guidelines).

The IFSA has issued the Notifications and Supervisory Guidelines under the Banking Act of Japan to implement the Basel III proposals (except for certain matters such as capital conservation buffers) that became effective as of March 31 2013.

The Notifications were issued under the authorisation of the Banking Act, and are legally binding. The Supervisory Guidelines do not have the same legal effect as the statutes or the regulations or the Notifications, but they set forth JFSA's enforcement policies and interpretations concerning the Banking Act, the regulations and the Notifications, and provide supplementary information as to how the statutes, the regulations and the notifications will be enforced. Banks are therefore expected to abide by the Supervisory Guidelines.

1.2 To what extent is local implementation expected to be more stringent than Basel III requires?



Implementation will be in accordance with Basel III requirements with some moderate national finishes.

1.3 Is it expected that the leverage ratio could be implemented in your legislation sooner than the official Basel III timetable requires?



It is anticipated that the timeframe for implementation of the leverage ratio will follow the timeframe required by Basel III.

1.4 Have specific additional rules and regulations been issued in relation to Systemically Important Banks?



To date, no specific additional rules have been published or introduced.

Section 2: Capital structure

Common Equity Tier 1 (CET1) structural idiosyncrasies

2.1 Is it anticipated that instruments other than common shares may be eligible to qualify as CET1 for banks and mutuals?

Stock acquisition rights (*shinkabu yoyakuken*) to acquire common shares of a bank may be eligible to qualify as CET1 for banks which are joint stock corporations (article 5, paragraph 1, item 3 of the Bank Notification)

Additional Tier 1 (AT1) structural idiosyncrasies

2.2 What type of loss absorbency features will be required for AT1 securities in your jurisdiction?

It is anticipated that regulators will allow temporary and permanent write down as well as equity conversion structures (article 6, paragraph 4 of the Bank Notification). For temporary write down, the Supervisory Guidelines provide additional requirements for debt instruments with temporary write down structures to qualify for AT1 capital (III -2-1-1-3(2) ①(*ba*) and (*ni*) of the Supervisory Guidelines).

2.3 What capital triggers are expected for AT1 securities?

The minimum trigger required in the Supervisory Guidelines is 5.125% (III -2-1-1-3(2) ①(*ba*) of the Supervisory Guidelines).

Tier 2 structural idiosyncrasies

2.4 What type of loss absorbency features will be required for Tier 2 securities in your jurisdiction?

Write down structures as well as equity conversion structures are expected. Terms of the instruments shall include provisions to the effect that write down, equity conversion of the principal or similar measures shall be effected if such measure or infusion of funds from the public sector is necessary in order for the bank to remain viable (article 7, paragraph 4, item 10 of the Bank Notification).

2.5 Will interest deferral be required for Tier 2 securities in your jurisdiction?

It is not expected that there will be a requirement to defer interest payments.

Section 3: Contingent capital

3.1 Has a role for contingent capital with triggers higher than 5.125% been formally established in your jurisdiction?



Yes, it is clear that contingent capital will count towards banks' capital ratios, assuming other requirements under the Notifications and the Supervisory Guidelines for AT1 or Tier 2 capital are satisfied.

Section 4: Bail in/non-viability

4.1 Is there in existence a relevant resolution regime which meets the requirement of the January 2011 Basel press statement?



There is no resolution regime and there is no stated timeframe for the implementation of such a regime. According to the Basel III regulatory consistency assessment (level 2) for Japan issued in October 2012, the JFSA intends to implement the contractual approach rather than the statutory approach to ensure loss absorbency at the point of non-viability.

Section 5: Tax treatment and other matters

5.1 To what extent have local rules or regulations been changed to enhance the tax efficiency of these instruments?



There will be no need to change rules or regulations, as the tax treatment of Basel III instruments will be broadly the same as pre-Basel III instruments.

5.2 Will local listing authorities treat the listing of the new Basel III instruments on the same basis as pre-Basel III instruments?



There have not been listed pre-Basel III instruments issued by Japanese banks in the Japanese markets, probably due to limited retail appetite for preferred shares. Pre-Basel III subordinated debt instruments for retail investors have been issued without a listing in Japan. That being said, there will be no change in the treatment for listing of Basel III instruments.



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