

Bond offerings under Japanese securities law

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Foreign private issuers' bonds that are listed on a Japanese securities exchange, such as the Tokyo Pro-Bond Market (TPBM), are subject to both the insider trading rules and the fair disclosure rules under Japanese law, while non-listed bonds (so-called 'Samurai bonds') are not (for further details please see "[Finalisation of fair disclosure rule under securities law](#)", "[Insider trading rule under Financial Instruments and Exchange Act](#)" and "[Application of fair disclosure rule to listed bonds](#)"). This article examines the rules that apply to offerings of Samurai bonds and bonds listed on the TPBM under Japanese securities law.

Samurai bond offerings

Under Japanese securities law, bond offerings can be conducted through either a public offering or a private placement. Offerings of samurai bonds are usually conducted through a public offering, which requires strict compliance with the statutory disclosure rules. Accordingly, before commencing the solicitation of bonds to potential investors, an issuer must prepare and file a disclosure document known as a 'securities registration statement' with the relevant regulatory authority. The issuer must then wait 15 days (or less if it is well recognised in the domestic market) for the securities registration statement to take effect. After the statement has taken effect, the issuer must deliver a prospectus to each investor before or when they agree to purchase the bonds. The format and content of securities registration statements and prospectuses are prescribed in detail in Japanese securities law. These documents consist mainly of information on the securities being offered and the issuer's business, including its audited financial statements.

Foreign private issuers can include:

- audited financial statements for the previous two years and non-audited financial statements for the three years preceding such two-year period; or
- audited financial statements for the previous three years.

If a foreign issuer applies foreign accounting rules to the financial statements included in its securities registration statement, it must obtain the relevant Japanese authority's approval. In general, a securities registration statement must be in Japanese. However, following amendments to Japanese securities law in 2011, subject to the approval of the Japanese authority, foreign issuers can substitute the parts of the securities registration statement that describe their business with disclosure documents in English, provided that they are disclosed in accordance with the law of the relevant foreign country or the rules of the relevant foreign securities exchange. Notably, even in such cases, foreign issuers must still prepare a document in Japanese outlining the securities that are being offered and other supplemental documents, such as a summary in Japanese regarding certain information, including:

- the selected financial information;
- the issuer's business; and

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- the risk factors.

Despite this added flexibility, from a practical perspective, there are difficulties in using such alternative disclosure documents in a public offering: securities companies are concerned that, based on the suitability rules, individual investors may be unable to understand disclosure documents which are in English.

Once a foreign issuer has conducted a public offering of bonds in Japan, it must submit the following until the bonds are fully redeemed:

- an annual securities report which includes audited annual financial statements; and
- a semi-annual securities report which includes semi-annual financial statements.

Private placements of bonds through TPBM

Bond offerings through the TPBM fall under the category of private placements. In general, this means that:

- only certain professional investors can purchase and sell these bonds; and
- these investors must agree to abide by this transfer restriction.

As such, the abovementioned disclosure regime does not apply to private placements of bonds. Instead, a simpler and more flexible disclosure regime applies. In the case of a private placement of bonds through the TPBM, foreign issuers are required only to prepare specified securities information and publish it on their website or that of the Tokyo Stock Exchange (TSE) before they can solicit bonds to professional investors. There is no waiting period, and no prospectus is required to be prepared and delivered to each investor.

The specified securities information can be in Japanese or English. The default format and content of the specified securities information are prescribed in the TSE rules and are similar to those of the securities registration statements. However, the TSE may approve other formats that are used in foreign countries. Many foreign issuers listed on the TPBM use disclosure documents prepared under the EU Prospectus Directive or the US Exchange Act 1934. In general, the specified securities information must include audited financial statements for the previous two years and foreign issuers can use Japanese accounting rules, US accounting rules, the International Financial Reporting Standards or other equivalent rules. In order to list bonds on the TPBM, the issuer must be rated by a rating agency (there is no minimum requirement as to the rating) and the lead managing underwriter must be among those registered in a list prepared by the TPBM, which currently includes 60 Japanese and foreign securities companies.

After a foreign issuer issues bonds, it must publish on an annual basis issuer information, including audited annual financial statements, on its website or that of the TSE. Subject to the TSE's approval, such issuer information can be prepared based on disclosure documents that were prepared in foreign countries. If certain credit events occur, they must be disclosed via the TSE's timely disclosure system (TDnet). Since the TPBM's establishment in 2011, the number of foreign issuers listed on the TPBM has increased. At present, the TPBM lists bonds or bond programmes issued or established by approximately 30 foreign issuers.

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