

5.1 Commercial Banks

Domestic and foreign commercial banks in Japan are regulated by the Ministry of Finance under the "New" Banking Law of 1981 (NBL).⁷⁹ The core business of banking is defined to include the acceptance of deposits, the making of loans and the performance of exchange transactions. In addition, the NBL lists a number of ancillary businesses that banks may engage in, including: buying and selling securities, although this is limited to transactions made on the bank's own account and those upon customers' written orders; lending securities; underwriting government bonds and government guaranteed debentures; acting as an agent for other banks and for those engaging in financial business; and foreign exchange.⁸⁰

The entry of foreign banks into Japan is subject to reciprocal treatment of Japanese banks in foreign markets.⁸¹ Once foreign banks are granted a licence, the NBL (Article 4) grants them formal parity with domestic banks under a national treatment standard. Foreign banks are allowed to engage in the same businesses as domestic banks, and the NBL makes no distinction with respect to branch expansions, bank acquisitions or funding.

When the NBL was implemented, there were some instances in which the treatment of foreign banks was better than national treatment. The national treatment plus included: a five-year exemption from new prudential lending limits applied to domestic banks; more generous certificate of deposit issuance limits; no strict capital/asset limits; and continued exemption from government bond underwriting requirements.⁸²

As is typical in most markets, foreign banks in Japan have focused on wholesale banking, investment banking such as money market activities, other types of corporate financing and foreign exchange. Usually, foreign banks are unable to compete with domestic retail networks, and generally refrain from attempting to do

⁷⁹ Law Number 59 of 1981.

⁸⁰ Banks can engage in a number of other business activities as well. See B.W. Semkow, *op. cit.*, p. 340.

⁸¹ See H. Moudi, "The State of U.S. Banking in the Global Arena", in *Boston University International Law Journal*, Vol. 10, No. 2, Boston University School of Law, Boston, MA, Fall 1992, p. 283.

⁸² See B.W. Semkow, *op. cit.*, p. 347.