STRENGTHENING JAPAN BY EXPANDING BANK ACCOUNT ACCESS TO ALL FOREIGN RESIDENTS

BY TIM ODAGIRI

EXECUTIVE SUMMARY

Japan has one of the most financially sound and vibrant banking systems in the world. But there is one group that is often barred from accessing this vital resource: foreign residents during their first six months in Japan. National and regional financial institutions identify Japan's 1949 Foreign Exchange and Foreign Trade Act as the reason for withholding accounts from these new arrivals. In fact, the text of that law reveals no such restriction. Instead, banks are relying on a 1980 statement by the Ministry of Finance that attempts to flesh out the residency requirements of the earlier law. It is true that "non-residents" of Japan may not open standard domestic bank accounts. However, when the Ministry of Finance listed two common examples of when foreigners should be treated as residents, banks opted to omit all other legitimate residency situations.

In recent years, the Financial Services Agency, a bureau within the Cabinet Office, has called on banks to loosen these restrictions, and with good reason. Under the status quo, banks are disqualifying a group of approved residents from accessing a vital resource at a time when they are most in need of a secure place to keep their funds. By reviewing the 1980 Ministry of Finance guidance and applying it as it was intended, banks can open up accounts to this underserved and growing group of Japanese residents.

INTRODUCTION

In any modern society, there are a few basic tools that all adults need to engage in the normal functions of everyday life. The most fundamental of these include food, clothing, and shelter. Some would add a steady job to that short list. But whether you are employed or not, you need a safe place to store the money that will be used to pay for the necessities of life. For residents of Japan, the natural place to stockpile such funds is in a general bank account.

Japan has more than 350 national and regional banks that serve communities across the country.[1] These banking businesses offer a standard selection of accounts, including the general account (普通) used by most individuals for daily transactions. Banks also provide time-deposit accounts (定期預金)—similar to certificates of deposit in the United States—that encourage longer-term savings in exchange for a higher rate of return.

Japan has one of the most financially sound banking systems in the world,[2] and it is no surprise that virtually everyone in Japan keeps their monetary resources in a national or regional bank. While accounts used to be restricted to adults, these days many thrifts allow schoolchildren and even newborns to establish accounts.[3] Active members of criminal organizations are barred from the banking system, but in recent years the National Police Agency has streamlined ways for ex-cons to get new accounts for legitimate use.[4]

There is, however, one group of adults that is routinely left out of the banking system: foreigners who have been in Japan less than six months. Most bank branches in Japan require at least half a year of residency before allowing foreign visa holders to open even the most basic savings account. Exceptions are granted for those who can document active employment at a Japanese company. This leeway does not apply to new arrivals who have other employment situations, including freelancers, the retired, non-working spouses of Japanese citizens, or those who derive income primarily from overseas sources. As it currently stands, these individuals, even though they were checked out by the Immigration Services Agency (ISA) and allowed to live in Japan, are nonetheless relegated to a level below that of former yakuza members and bottle-fed infants.

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[1] The Bank of Japan's April 2024 *Financial System Report* identifies 10 major banks, 99 regional banks, and 247 "shinkin" banks (akin to credit unions) operating in Japan.

[2] The International Monetary Fund said in its May 2024 assessment of the country that "Japan has one of the largest financial systems in the world," and that its "large and globally well-integrated financial system has remained resilient" even in the face of the global COVID-19 pandemic.

[3] For example, Mitsui Sumitomo Banking Corporation (SMBC) offers accounts to newborns as of May 2024. See https://www.smbc.co.jp/kojin/special/kodomo_koza, which lists two types of accounts for those under 15 and those who are older.

[4] National Police Agency, "Assistance with Opening Accounts for Former Gang Members," February 2022.

The typical Japanese citizen is likely unaware that a significant number of legal residents are prevented from accessing a safe and standardized place to manage their own financial resources, but such limitations are announced clearly on the web sites of major banks. As an example, SBI Shinsei Bank mentions this six-month limit on its web page that lists documentation requirements for new accounts.

> To confirm you are a Resident defined under the *Foreign Exchange and Foreign Trade Act*, please prepare a valid Identification Document to verify you have been residing in Japan for over 6 months.[5]

Rakuten Bank, a popular online banker, has a similar limitation.

> Residency under the Foreign Exchange and Foreign Trade Law: If you work at an office in Japan or have been in Japan for at least six months, you are considered a "resident." Those other than the above are considered "non-residents."[6]

A related issue happens at the back end, when foreigners are returning to their countries of origin. Because Japanese bank accounts are issued only to residents, any functioning account is, in principle, deactivated on the day the expat's Residence Card (在留カード) expires, or on the date of final departure, whichever comes first. This closure occurs whether or not there are pending private or governmental financial transactions in need of settlement, and whether or not there are funds still sitting in the account.

Additionally, many banks will not allow any resident to create a bank account if less than three months remain on the Residence Card, even if the inquiring customer has already started procedures to extend (renew) the period of stay in Japan. Japan Post Bank explains it this way.

> If the expiration date of your period of stay falls within three months of the date you apply to open an account, we will not be able to open an account for you.[7]

A few financial institutions are even more restrictive. For example, the Bank of Yokohama, one of the largest regional banks, makes this blunt statement concerning account creation.

> Those with foreign citizenship may not apply.[8]

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[5] See https://www.sbishinseibank.co.jp/account/note/ao_simulation/6month_over.html. Emphasis in original.

[6] See https://help-personal.rakuten-bank.net/外国人の口座開設はどのようにすれば良いですか？-644b26f7f2d47e001bed1c00. Translated by deepl.com.

[7] See https://www.jp-bank.japanpost.jp/kaisetu/kat_gaikokujin.html. Translated by deepl.com.

[8] See https://www.boy.co.jp/kojin/kouza/index.html. Translated by deepl.com.

Despite such extremes, restrictions on banking accounts for foreign residents are generally consistent across the industry. With such uniformity, there must be some guiding principle or agreed-upon statement when it comes to dealing with foreigners.

The quotes shown earlier from SBI Shinsei Bank and Rakuten Bank provide the starting point for investigation. These two banks and others reference the "Foreign Exchange and Foreign Trade Act." This law, originally passed in 1949, outlines Japan's legal framework for residents and corporations within Japan who wish to conduct international trade, including transactions with non-residents that involve domestic bank accounts. Referencing this law in connection with restrictions on foreigner-held accounts offers the imprimatur of legal authority. However, as explored in detail below, the standards enacted by national and local banks are based on an incorrect reading of this fundamental legislation.

BANKING LAWS IN JAPAN

Modern Japanese banking legislation began with the original National Bank Ordinance, promulgated in 1872, just a few years into the Meiji Era. An upgrade to the law in 1927 forced banking institutions to divest themselves from securities trading and other risky endeavors. Today's thrifts rely on a completely revamped Banking Act that went into effect in June 1981, plus later amendments.

The current law defines the services and organizational structure of consumer-facing financial businesses. At this level, no distinction is made between customers who are Japanese citizens and those who hail from overseas. The text merely references depositors in general, and the purpose of the act, according to its opening lines, is

> to preserve the credibility of a bank's services in view of their public nature; to achieve the sound and appropriate management of a bank's services in order to ensure protection for depositors and facilitate the smooth functioning of financial services; and to thereby contribute to the sound development of the national economy.[9]

On top of this foundation of protection for depositors rests the Foreign Exchange and Foreign Trade Act. Added to the civil code in 1949, its current stated purpose is

> to ensure that international transactions develop normally and that peace and security are maintained in Japan and the international community through the implementation of the minimum necessary controls and coordination for international transactions, under the basic principle of free engagement in foreign exchange, foreign trade, and other such international transactions….[10]

[9] Banking Act, Article 1, Section 1. Translation by Japanese Law Translation.

[10] Foreign Exchange Act, Article 1.

The original law, established under the supervision of the occupying Supreme Commander for the Allied Powers (GHQ), lacked encouraging terms such as "minimum necessary controls" and "basic principle of free engagement." In fact, the post-war version of the law determined that, in principle, residents of Japan could not engage in foreign trade unless given permission by the government.[11] The original law even included the term "control" (管理) in the title.

Liberalization in the area of foreign trade came via a major 1980 revision of the law that replaced the principle of "get permission first" with a new system that assumed open foreign trade unless specifically limited by government.[12] Despite this new openness, the updated text retained the original distinction between "residents" and "non-residents," since the entire purpose of the Foreign Exchange law was to oversee interactions between those groups.

The text of the law does not come right out and say that non-residents cannot have bank accounts. However, given that the original framework started with the default set to "no trade with non-residents," and especially when paired with the retention of resident and non-resident classes within the updated code, Japan's major financial entities continue to view such accounts as a benefit offered only to those who have achieved residency in Japan.

This is how the system plays out in practice: Residents can have accounts; non-residents cannot. The issue with foreign residents who are within their first half-year in Japan is not that random individuals living in another country are barred from opening domestic savings accounts, but rather that Japanese banks continue to place authorized, visa-holding residents of Japan within the non-resident category.

DEFINING RESIDENT AND NON-RESIDENT

Article 6, Section 1 of the Foreign Exchange act provides straightforward definitions for both residents and non-residents. The portion that describes residents includes information for both individuals and corporations.

> The term "resident" means a natural person with a domicile or residence in Japan or a corporation whose principal office is in Japan.[13]

For individuals, the defining factor for residency is that they possess either a "domicile" (居所) or "residence" (住所) in Japan. Residence refers to the place where you actively abide, where you keep items needed for daily life, and where you fall asleep each evening. A domicile

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[11] The expression used was, "Foreign transactions are, in principle, prohibited" (対外取引原則禁止).

[12] The Ministry of Finance expressed this as, "a legal system that in principle allows freedom of foreign trade" (対外取引を原則自由とする法体系). See the ministry's introduction to the law at https://www.mof.go.jp/policy/international_policy/gaitame_kawase/gaitame/hensen.html.

[13] Foreign Exchange Act, Article 6, Section 1, Item v. Translation by Japanese Law Translation.

identifies your legal home base, whether you are currently living there or not. For example, if you have your regular home in Tokyo but have been sent by your company to work for one year in Osaka, your domicile remains in Tokyo, but your residence for that one year is in Osaka. To qualify as a resident for banking purposes, at least one of these two locations must be in Japan.

This definition works for both Japanese citizens and foreign residents. If your main home is in, say, Sweden, but you are working in Japan for a few years on a work-related visa, your domicile might still be in Europe, but your residence is in Japan. Assuming that you have the legal right to stay in Japan, that daily living space qualifies you for residency under the language in the Foreign Exchange law.

Non-residents include everyone who has neither a domicile nor a residence in Japan.

> The term “non-resident” means a natural person or corporation other than a resident.[14]

Apart from some further details for corporations, these definitions represent the entire set of rules for identifying who is a resident and who is not. Neither the six-month boundary nor the employment stipulation appears within the Foreign Exchange law. But there is one extra qualification that provides the gateway for these types of adjustments.

> If it is not clear whether a person is a resident or a non-resident, the Minister of Finance decides this.[15]

This short clause allows Japan’s Ministry of Finance, as overseen by its cabinet minister, to deal with edge cases. One common complexity involves foreign diplomats residing in Japan. The visas issued to these individuals come with special restrictions and rights, including diplomatic immunity from prosecution and an exemption from domestic taxation. Do these individuals, who may reside in Japan for years, qualify as residents under the Foreign Exchange law? What about members of the United States Armed Forces who live within military bases on Japanese soil? Does their presence here grant them residency for banking purposes?

To help banks deal with these and other thorny issues, the Ministry of Finance issued The Interpretation and Application of Foreign Exchange Laws and Regulations near the end of 1980. This publication clarifies the situation for both diplomats and American military personnel: None of them are residents. But this document also includes the language that banks use to withhold accounts from those who have not yet lived at least six months in Japan.

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[14] Foreign Exchange Act, Article 6, Section 1, Item vi. Translation by Japanese Law Translation.

[15] Foreign Exchange Act, Article 6, Section 2. Translation by Japanese Law Translation.

> In principle, a foreign national shall be presumed not to have his/her domicile or residence in Japan and shall be treated as a non-resident, but the following persons shall be presumed to have their domicile or residence in Japan and shall be treated as residents.
>
> (a) Those who work in an office in Japan
>
> (b) Those who have been in Japan for six months or more since their entry into Japan[16]

The two items shown here clarifying which visa-holders are presumed (推定) to reside in Japan parallel standards presented on various bank web sites and account materials. When Japanese banks indicate that the Foreign Exchange and Foreign Trade Act requires them to apply these limits to foreign residents, they are in fact referencing the Interpretation and Application document issued by the Ministry of Finance back in 1980 rather than the Foreign Exchange law itself. Or to put it another way, financial institutions are stating their adherence to an act of the legislature but are instead abiding by standards documented in a ministry-level missive.

TYPE OF JAPANESE LAWS

Before we ask whether banks are applying the law correctly, we first must determine if they are quoting an actual law. The Japanese Constitution is "the supreme law of the nation," as declared by the document itself.[17] As for all other laws, they are debated and voted on by the Diet, "the sole law-making organ of the State."[18] No other branch of government can establish law, at least at the national level. (Article 94 permits local jurisdictions to enact regulations that are limited to the authorized geography.) There is, however, a second tier of official decrees that, in many ways, function like laws. These are called "cabinet orders" (政令), created by the executive branch "in order to execute the provisions of this Constitution and of the law."[19] They are not true laws, since they are not issued by "the sole law-making organ of the State." Rather, they define the implementation details for existing laws and constitutional articles when the law itself does not contain enough information to get the job done.

Assuming that these orders stay within their defined bounds, they are treated in public as if they were valid stipulations of the laws as passed by the Diet. "Ministerial orders" (省令) are similar to cabinet orders but are issued by a specific ministry rather than by the Cabinet. These

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[16] Interpretation and Application, the section referencing entries 6-1-5 and 6-1-6 ("Residency Criteria," 居住性の判定基準) in the underlying Foreign Exchange and Foreign Trade Act.

[17] Constitution of Japan, Article 98.

[18] Constitution, Article 41. The Diet also must approve law-like international treaties, according to Article 61.

[19] Constitution, Article 73.

branch-level orders are limited to the scope of authority granted to the overseeing minister of state. None of these orders are true laws, but they might as well be.

There is yet another tier below cabinet and ministerial orders: the notification level. There are two general types of notices defined by the National Government Organization Law: public notifications (告示) and circular notices (通達).[20] Public notifications are issued by ministries and their various departments when something important concerning the law or its implementation needs to be declared broadly. Circular notices, by contrast, are designed for internal use, specifically when an administrative body needs to issue guidance to a subordinate organization. These notices do not carry the power of law, but instead offer guidance and direction to agencies assigned to execute the provisions of the law.

As for The Interpretation and Application of Foreign Exchange Laws and Regulations, it was issued by the Ministry of Finance in 1980 as Circular Notice No. 4672. It provided guidance on four specific trade laws, including the Foreign Exchange act. The document says in essence, "Hello banks, this is your finance minister. I thought you might be confused about some of the finer points of foreign-trade law, so I wrote up this handy guide to let you know how this ministry interprets things. You should do things this way."

The specifics within the circular are likely just what banks were looking for, and clearly, they took the advice to heart, given how many institutions impose identical limits on foreign residents. The Ministry of Finance has oversight into the operations of financial institutions, and it was appropriate for the minister to issue guidance to them in the form of a circular notice. The document also carries the "interpretation" (解釈) moniker in its title, lest anyone forget that its content includes procedural clarifications rather than actual law.

Given that financial institutions are relying on the advice from a circular to withhold banking services from some foreign residents, it behooves us to ask: Is this circular notice legal and binding on banks? The answer is: probably. The Ministry of Finance is authorized to convey guidance to subordinate organizations—banks, in this case—through these circulars provided that the directives fall within the bounds of the law. The core Foreign Exchange act does authorize the Minister of Finance to clarify distinctions between residents and non-residents, even if that boundary does not line up with the one used by the Immigration Services Agency.

Instead of using the circular format, the Ministry of Finance could have issued a ministerial order with these same definitions for residents and non-residents, giving the rules a law-like status. Such orders, assuming they pass legal muster, are binding on the same audience as the original law, which in this case would be anyone who engages in foreign trade. Circular notices, by contrast, are enforceable only on the subordinate organizations that are the target

[20] National Government Organization Act, July 1948. See Article 14, Sections 1 and 2 for details on ministry notices.

of the notice, and not on the public at large. Still, that distinction might be a quibble, since Japan's Supreme Court has implied that these circulars, though not actual law, are still presumed to be communicating matters that are within the context and authority of the relevant law.[21]

APPLICATION OF MINISTRY GUIDELINES

With that examination of the law out of the way, it is time to return to the original question: When banks prevent new foreign residents from creating bank accounts, are they following the Foreign Exchange act as clarified in Circular Notice No. 4672? To find out, let us look once more at the text from that notice.

> In principle, a foreign national shall be presumed not to have his/her domicile or residence in Japan and shall be treated as a non-resident, but the following persons shall be presumed to have their domicile or residence in Japan and shall be treated as residents.
>
> (a) Those who work in an office in Japan
>
> (b) Those who have been in Japan for six months or more since their entry into Japan

The first half of this condition says that, in general, foreigners are not residents because they do not have a residence or domicile in Japan. This is a true statement. Of the world's billions of people, the vast majority are foreigners from Japan's perspective. A portion of these foreigners are residents of Japan—and therefore qualify for bank accounts—but most live somewhere else that is outside the area covered by the definition of residency. Figure 1 shows these relationships.

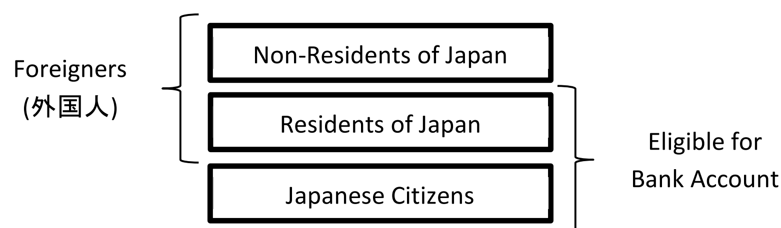

Figure 1. Non-residents versus those eligible for bank accounts.

Foreigners who fall within the non-resident collection include those who have never had any interaction with Japan as well as those who are currently passing through the country as tourists. These individuals do not have an active residence in Japan—a short-term stay in a

[21] Supreme Court of Japan, "Case of Claim for Healthcare Allowance for A-bomb Survivors in Brazil." The court found that although a circular notice "does not have direct legal effect on the public, it gives the public the presumption that the matters stipulated in the notification have a reasonable basis in law." Translation by deepl.com.

hotel does not count—nor do they have a domicile registered in Japan or noted on a municipal Residence Certificate (住民票). With this lack of a residential dwelling place in Japan, they are non-residents and are not entitled to bank accounts.

If you point to a person and say, “That’s a foreigner,” that statement alone is not enough to determine whether someone is a resident or not. The presumption is that he or she is a non-resident, and in principle, this is correct. But not always. Some of these foreigners are residents of Japan, and despite the initial presumption of non-residency, additional research is needed to know for sure. That is one of the reasons why foreign residents in Japan are required to have their Residence Card with them at all times, so that they can provide evidence of their authorization to stay in Japan as a resident.

The second half of the residency condition statement from the circular notice states that among all foreigners, there are some who are presumed to be residents. It goes on to give two specific examples of those who are presumed to have such residency: (1) those who have lived in Japan at least six months, and (2) those who are employed by Japanese firms.

As with the first condition, these are just presumptions. It is possible that a foreigner has lived in Japan more than six months and yet is not a (legal) resident, perhaps because his visa has already expired, or because she is a diplomat. Seeing someone at work in a Japanese office is also not in itself proof of residency, since that person might just be in Tokyo for a few days on a business trip, hanging out at their France-based corporation’s branch office in Japan. But these are rare cases. The majority of foreigners who have been in Japan six months or more or who work in an office in Japan are valid residents and should be granted access to bank accounts under the Foreign Exchange law. Again, despite the initial presumption, additional research is needed to know with certainty who is a resident and who is not.

The guidance in the circular, therefore, does not make clear-cut statements about residency. Instead, it tells banks what their initial first guest should be about residency before they engage in a fact-finding mission to find out for sure. A foreigner who has lived in Japan for more than half a year could be a non-resident; the bank needs to make a valid determination before granting access to a bank account. But the flip side is also true: A foreigner who has lived in Japan less than half a year might be a resident; the bank needs to go beyond the initial presumptive guess and confirm whether there is a valid claim of residency.

Unfortunately, that is not happening. Financial institutions are taking the starting points mentioned in the Ministry of Finance circular and treating them as absolute and inflexible rules from which banks can never deviate. But the circular is not written that way, and banks are diverging from the stated intention of the law when they adhere to a small set of incomplete assumptions to avoid doing the hard work of determining the true residency status of individual foreign residents.

GOVERNMENT CALLS FOR FLEXIBILITY

As mentioned above, a major goal of Japan's banking laws is "to preserve the credibility of a bank's services." However, for foreign residents who are just starting their lives here in Japan, the banking system is a source of misery that lasts for months on end. When grown adults are unable to access one of the most basic services available within modern society, it immediately stifles the good expectations that these new arrivals had. Worse still, the current arrangement puts immigrants on the defensive, since there is an assumption that allowing them to open bank accounts when first disembarking would somehow reduce "the credibility of a bank's services."

Foreign residents are not the only ones who recognize this frustration. Several government agencies, including those helping to manage Japan's banking systems, have in recent years issued calls for a more liberal attitude on banking account restrictions.

In a 2022 year-in-review publication, the Financial Services Agency (FSA)—a branch of the government that works in tandem with the Ministry of Finance to provide oversight to banks—gave voice to the difficulties that foreign students have in obtaining accounts.

> Many banks require foreign students to be residents under the Foreign Exchange and Foreign Trade Act as one of the conditions for opening a bank account, and we often hear that foreign students cannot open a bank account as a result of being treated as non-residents under the Foreign Exchange and Foreign Trade Act until six months have passed since their arrival in Japan.[22]

The document goes on to recommend that the controls be loosened.

> We would ask that measures be considered that would allow foreign students to open bank accounts without having to wait for six months after their arrival in Japan.[23]

In February 2023, this same agency expressed concerns about entrepreneurs who come to Japan with hopes of starting a business, employing locals, and sharing the wealth through tax payments and increased economic activity. Specifically, the FSA asked that the six-month standard be waived for foreign business leaders who participate in the National Strategic Zone Foreign Entrepreneurship Promotion Program.[24] Concerning these entrepreneurs,

> …the Financial Services Agency will take necessary measures in Fiscal Year 2022 to allow foreign entrepreneurs to open a resident account (or its equivalent) if they request such

[22] Financial Services Agency Annual Report – Fiscal Year 2022 Edition, page 50. Translation by deepl.com.

[23] FSA 2022 Report, page 50.

[24] Details on the Promotion Program at https://www.chisou.go.jp/tiiki/kokusentoc/english/index.html.

> an account before six months have passed since their arrival in Japan, after verifying a certificate of confirmation of their preparatory activities for starting a business.[25]

Both of these appeals reference a Cabinet publication from December 2022, the "Interim Report on the Promotion of Regulatory Reform." According to the portion dealing with startups created by foreign entrepreneurs,

> …the Ministry of Finance will begin examining the criteria for determining the residency of foreign nationals as early as possible during fiscal year 2022 to determine whether they can be revised in a manner more in line with actual conditions and will reach a conclusion by the first half of fiscal year 2023 after organizing the direction of the review.[26]

Based on this goal, the FSA promised to "work closely with the Ministry of Finance to enable such foreign customers to open resident accounts or accounts equivalent to those of residents."[27] According to at least one financial news outlet, joint efforts by those two agencies had already started, with promises to issue guidance by March 2023 as to how financial institutions could properly offer new accounts to these entrepreneurs.[28]

True to its word, the FSA quickly issued a missive to banks in early February.[29] The short two-page bulletin makes three requests to banks, all with the goal of providing account access to foreign entrepreneurs within their first six months of residency. As forward-thinking as that sounds, it still comes with caveats and documentation requirements, including a requirement by banks to verify the customer's "Business Startup Preparatory Activities Certificate of Completion."

Despite this limited progress, calls for flexibility will likely continue. In March 2024, Japan activated a new "Digital Nomad" visa that allows foreigners to work remotely from Japan for up to six months.[30] Spouses and children are welcome, but there is still the question about how these families will navigate normal daily life without access to a local store of funds.

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[25] FSA, "Major Issues Raised by the FSA in Discussion Meetings with Industry Groups," March 2023, Item 1. Translation by deepl.com.

[26] Cabinet Office, "Interim Report on the Promotion of Regulatory Reform," December 2022. See Chapter 1, Section II, Paragraph 1, "Startup and Innovation," Item II.1.ア.e. Translation by deepl.com.

[27] FSA, "Major Issues Raised…," Item 1. Translation by deepl.com.

[28] *Nikken*, "Flexibility in Opening Bank Accounts for Foreigners, Government to Review Residency Criteria," January 2023.

[29] FSA, "Regarding the Provision of Financial Services to Foreign Entrepreneurs under Specific Support Programs," February 7, 2023.

[30] For the Digital Nomad visa, see https://www.mofa.go.jp/ca/fna/pagewe_000001_00046.html.

The country has also been welcoming more foreign residents under its visa programs for "specified skilled workers," especially in the healthcare, construction, and service industries. Unlike the "highly skilled" visa programs, where you might expect applicants to have the resources needed to deal with short-term frustrations like the lack of a Japanese bank account, some immigrants arriving under skilled-worker visas may be in situations that could put them at increased risk for financial abuse. Asking someone with limited resources, poor language skills, and unfamiliarity with Japan's systems to just deal with it means that some of them will seek less-than-reputable alternatives to traditional banks.

Despite the overall lack of urgency in resolving the banking situation for new arrivals, that financial news article mentioned above did include one interesting revelation. After referencing the Ministry of Finance Circular Notice No. 4672 as the key reason for current banking behaviors, the column went on to insist that circular's rules did not need to be followed.

> The circular does not directly regulate the operations of financial institutions. Although adequate anti-money laundering measures are a prerequisite, financial institutions can, at their discretion, provide the same level of service to foreigners who do not meet the criteria as to residents.[31]

This statement correctly distinguishes between promulgated law and notices issued by bureaucratic departments. The circular notice does not represent legislation enacted by the sovereign people's representatives, but instead offers helpful advice from an administrative agency that it hopes financial institutions will follow.

CONSISTENCY FOR THE RESIDENCY QUESTION

Even with the guidelines issued in 1980 by the Ministry of Finance—or perhaps because of them—confusion over who should be treated as a resident still remains. Banks impose a strict six-month standard for foreign residents who are not employed by Japanese firms. At the same time, the Financial Services Agency, a Cabinet Office division that oversees and regulates financial institutions, is begging these banks to be more flexible when it comes to granting accounts to new arrivals. Even with these conflicting messages, the Ministry of Finance has not updated the soft language of its recommendations since initial publication more than four decades ago.

Perhaps it is unfair to saddle this ministry, focused as it is on financial concerns, with the task of defining residency. Besides, there is an entire agency within the executive bureaucracy that is dedicated to understanding the distinctions between residents and non-residents. This is the Immigration Services Agency (出入国在留管理庁), a branch of the Ministry of Justice

[31] *Nikken*, "Flexibility in opening bank accounts…." Translation by deepl.com.

that oversees the management of alien matters. As the body that implements the core provisions of the Immigration Control and Refuge Recognition Act, its stated purpose, in part, is "to provide fair management over…the residency of foreign nationals in Japan…."[32]

The Immigration Control law defines the status of residents—specifically, "mid- to long-term" residents—as those who (1) have been granted a period of stay greater than three months, (2) are not "temporary visitors," (3) are not "diplomats" or "officials," and (4) have not been specifically singled out by the Ministry of Justice for exclusion. The ISA provides Residence Cards to these mid- to long-term inhabitants, establishing ready documentation for those permissions (such as authorization to work) granted in line with the specific type of visa issued to each alien. All other foreigners—temporary visitors, diplomats, officials, and so on—are considered non-residents and are not given a Residence Card.

Each Residence Card has an initial expiration date which can be extended within the provisions of the law or set to an indefinite period for permanent residents. In short, there is an official, physical, counterfeit-resistant, pocket-sized card that all mid- to long-term residents must always carry with them which states clearly that the organs of the Japanese government have deemed the individual as having a valid residency status under the Immigration Control law, good up through the date printed on the card.

Given that the Immigration Services Agency has an entire section of the law telling it to differentiate between residents and non-residents, why is the Ministry of Finance (and not the Ministry of Justice) issuing guidance on who can have a bank account? In part, it is because the Foreign Exchange law gives the Minister of Finance that responsibility. As referenced near the beginning of this paper, the Foreign Exchange law says that "if it is not clear whether a person is a resident or a non-resident, the Minister of Finance decides this." But the Minister of Finance could have issued standards that match up with those already defined in the Immigration Control law. Why are there two different standards for residency?

Unfortunately, background documentation for the 1980 recommendations is not readily available. Whereas the justifications for the 1949 Foreign Exchange law, which were debated by elected members of the Diet, are available for anyone to read in the annals of the legislature,[33] the Ministry of Finance has not released comparable background information on its 1980 statement.[34]

[32] Immigration Control and Refuge Recognition Act, Article 1. Translation by Japanese Law Translation.

[33] Deliberations of promulgated laws during the post-war years are available in the Record of Diet Proceedings (国会会議録) hosted on the National Diet Library's Japan Law Index web site (hourei.ndl.go.jp). For the history of this act, see https://hourei.ndl.go.jp/simple/detail?lawId=0000041840#deliberation.

[34] When asked in June 2024 about the disposition of these background documents, the Ministry of Finance directed the author back to Circular Notice No. 4672, stating that it contained the "criteria for determination of residency status," perhaps implying that further documentation was either unavailable or unnecessary.

Perhaps the decision was made based on the original “no foreign trade by default” language that persisted in the Foreign Exchange law up through its major revision in 1980, right around the time that the Ministry of Finance released its circular notice.

Another possibility is that the language was designed to reduce regulatory and financial burdens on banks as they worked to conform to the revised Foreign Exchange law. While the cost to vet each new foreign-resident account holder may be small, it is a cost, nonetheless, one that does not need to be paid when acquiring citizens as customers. This is particularly true in an era when financial institutions are required to fill out additional paperwork on behalf of foreign governments.[35] Going through these regulatory procedures only to find out that a foreigner is not entitled to an account hits a bank’s bottom line.

A related issue is the difficulty that banks and other institutions encounter when dealing with individuals whose situation doesn’t conform to bureaucratic norms. Japan is a country where procedures are designed to meet the needs of the target audience—the native population. Foreigners with long, multi-part names written in Latin script sometimes find it impossible to complete paperwork that was designed for Japanese citizens and their relatively short, kanji and kana-based names. Banks have found ways to deal with such situations; foreign residents who have lived in Japan beyond the six-month boundary do have savings accounts, after all. But there is still a cost related to the number of instances where adjustments to standard procedures must be considered.

Beyond these practical concerns, banks may also worry that they will violate the law if they are in any way lax when it comes to correctly identifying non-residents who should be turned away. This tendency to err on the side of caution is a common fixture in Japan’s hierarchical administrative environment, where decisions at the lower levels are passed up the chain, lest a wrong choice lead to an embarrassing situation or, in this case, an outright breaking of the law. Imposing a blanket prohibition on all foreigners who have not yet entered their seventh month in Japan reduces the risk of attracting the regulatory eye of the FSA. Twenty-first century expectations that banks Know Your Customer in order to prevent money laundering and other nefarious activities have also increased the pressure to limit accounts to authorized applicants only.

None of these concerns justify denying accounts to those who are entitled to acquire them by law. But it does bring some understanding as to why the status quo has continued so long.

[35] A common example is the Foreign Account Tax Compliance Act (FATCA) document that all US citizens must submit when establishing accounts outside the United States.

A PROPOSAL FOR CHANGE

The Ministry of Finance's 1980 Interpretation and Application of Foreign Exchange Laws and Regulations circular provided a way for banks to streamline the verification process for the most common situations. It allowed banks to run through the following script when assessing individuals as to whether they should have access to new accounts.

1. Are you a Japanese citizen? If yes, you can have an account.[36]

2. Do you work for a company here in Japan? If yes, you can have an account.

3. Have you resided in Japan at least six months? If yes, you can have an account.

The problem is that banks are stopping at this point, only granting accounts to those who can answer "yes" to at least one of those three questions. Rather than upholding the rule of law, they are working against the intent of the Foreign Exchange law by withholding bank accounts from bonified residents of Japan. They are also failing to take seriously the guidelines documented in the 1980 circular notice, interpreting them as firm boundaries rather than as a set of helpful tools to be used in the vetting process. What financial institutions should do is to continue the script for those who were unable to answer the first three questions in the affirmative.

4. Does your Residence Card show that you are a current resident of Japan? If yes, you can have an account.

5. Do you have documentation from the Immigration Services Agency or Ministry of Justice showing that you are in the process of renewing or extending your period of stay? If yes, you can have an account conditional on the outcome of that renewal process.

Because the Foreign Exchange law allows any valid resident (with documented exceptions) to have an account, banks should be using that standard instead of aborting the verification process once the easy cases have been dealt with. This adherence to law should extend to both the beginning and the end of a foreign resident's stay in Japan. Telling registered residents that they cannot switch banks during their final months in Japan—or during the visa-renewal process—establishes an impediment for a subset of legal residents not imposed on the broader citizenry.

To summarize the suggested changes:

[36] There may be other factors that would restrict account access in each case. For example, active members of criminal organizations cannot have bank accounts, even if they are Japanese citizens.

- Banks and related financial institutions should grant account privileges to all legal residents of Japan—generally those with a permitted length of stay greater than three months—starting from the date of entry granted by the Ministry of Justice's Immigration Services Agency.
- Banks should use the privileges and dates documented on the government-issued Residence Card as the primary factor in determining who is a resident and who is not.
- Banks should permit the creation of new resident accounts during the entire permitted period of stay, up through the legal end date documented on the Residence Card or extension paperwork.

Although it is outside the scope of this paper, the following recommendations also apply to financial institutions.

- Documentation provided by financial institutions to foreign residents should separate the discussion of residency from the discussion of money laundering. Currently, these materials imply that the key reason banks are so strict is because foreigners are likely to engage in illegal behavior, including money laundering. Given that the ISA has already performed background checks on all new visa holders, those granted residency should not be presumed guilty of illegal intent.
- Bank should find ways to enable limited accounts for up to three months after a former foreign resident has departed Japan. This would allow for end-of-stay transactions to be completed without complication. Such accounts could be limited to transactions with government agencies, utilities, and employers. Final account closure could occur once all outstanding transactions have cleared or three months have elapsed, whichever comes first.

To help banks understand the importance of these changes, the Ministry of Finance should issue an updated statement that supports the law as written. That is, it should make clear that all legal residents (with reasonable exceptions for diplomats and the like), regardless of citizenship status, should be provided access to standard financial accounts on par with those granted to the native population.

The current restriction on granting accounts to new foreign residents puts an undue burden on those who are perhaps the most in need of immediate access to such accounts. The current barriers reduce social harmony by pitting a group of legal residents against everyone else, forcing them to battle systems that are designed to protect them and all other residents. By implementing the recommendations offered in this paper, financial institutions can help ensure equitable, secure, and stable access to the banking system for every legal resident of Japan. In doing so, they will "preserve the credibility of a bank's services in view of their public nature…and to thereby contribute to the sound development of the national economy."

APPENDIX A –FOREIGN EXCHANGE AND FOREIGN TRADE ACT

The following excerpt is from the current edition of the Foreign Exchange and Foreign Trade Act, originally promulgated on December 1, 1949, as Showa 24 No. 228, and most recently updated in 2019. For the official English translation, visit the government's Japanese Law Translation web site for the act, https://www.japaneselawtranslation.go.jp/en/laws/view/4412.

Chapter I – General Provisions

Article 6

(1) In this Act and Orders based on this Act, the meanings of the terms set forth in the following items are as prescribed in those items:

> (v) the term "resident" means a natural person with a domicile or residence in Japan or a corporation whose principal office is in Japan. Regardless of whether a non-resident's branch office, local office, or other such office in Japan has the legal authority to represent that non-resident, that office is deemed to be a resident, even if the non-resident's principal office is located in a foreign state;
>
> (vi) the term "non-resident" means a natural person or corporation other than a resident;

(2) If it is not clear whether a person is a resident or a non-resident, the Minister of Finance decides this.

第一章　総則

第六条 この法律又はこの法律に基づく命令において、次の各号に掲げる用語の意義は、当該各号に定めるところによる。

> 五「居住者」とは、本邦内に住所又は居所を有する自然人及び本邦内に主たる事務所を有する法人をいう。非居住者の本邦内の支店、出張所その他の事務所は、法律上代理権があると否とにかかわらず、その主たる事務所が外国にある場合においても居住者とみなす。
>
> 六「非居住者」とは、居住者以外の自然人及び法人をいう。

２ 居住者又は非居住者の区別が明白でない場合については、財務大臣の定めるところによる。

APPENDIX B – MINISTRY OF FINANCE CIRCULAR

The following excerpt is from the Ministry of Finance's Circular Notice No. 4672, issued on November 29, 1980. The translation shown here was generated by deepl.com.

In principle, a foreign national shall be presumed not to have his/her domicile or residence in Japan and shall be treated as a non-resident, but the following persons shall be presumed to have their domicile or residence in Japan and shall be treated as residents.

(a) Those who work in an office in Japan

(b) Those who have been in Japan for six months or more since their entry into Japan

外国人は、原則として、その住所又は居所を本邦内に有しないものと推定し、非居住者として取り扱うが、次に掲げる者については、その住所又は居所を本邦内に有するものと推定し、居住者として取り扱う。

(ｲ) 本邦内にある事務所に勤務する者

(ﾛ) 本邦に入国後６月以上経過するに至つた者

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