

Amendment to the FIEA / Easing of Registration Requirements for the Investment Management Business with Qualified Investors

On May 25, 2011, the bill for “the amendment of the Financial Instruments and Exchange Act, etc. for strengthening the foundations for the financial markets and the financial industry” was promulgated into law (the “*Amendment*”). The Amendment provides for, among others, easing the registration requirements under the Financial Instruments and Exchange Act (Act No. 25 of 1948) (the “*FIEA*”) for the Investment Management Business (“*IMB*”; as defined in Article 28, Paragraph 4 of the FIEA) with respect to Qualified Investors or “*QI*” (as defined below).

1. Background

The current regulations impose strict registration requirements for the regular IMB, which requirements may seem burdensome and costly for applicants. Moreover, in cases where a Registered Investment Manager (i.e., a person who is registered to engage in the IMB) handles private placements of interest in investment funds being managed by him/her under a Discretionary Investment Management Agreement (“*DIMA*”), such Registered Investment Manager is required to obtain a separate registration to be able to engage in the Type 1 Financial Instruments Business (“*Type 1 FIB*”; as defined in Article 28, Paragraph 1 of the FIEA), which is likewise subjected to stringent registration requirements. These stringent regulations seem to have had an adverse impact on the launch of the IMB. In order to offset the negative effect of such strict registration requirements on the IMB, the Financial Services Agency of Japan (the “*FSA*”) pushed for the amendment of the FIEA with a view to partially easing the aforementioned regulations (the Amendment of the FIEA relating to the partial easing of the IMB and certain marketing activities registration requirements is hereinafter referred to as the “*Exception*”).

2. Outline of the Exception

(A) Easing the Registration Requirements for the IMBQI

Under the Amendment, the registration requirements for the IMBQI (as defined below), as compared to the current requirements applicable to the regular IMB, will be eased as follows:

1. Requirements Concerning Personnel Structure

Following the planned revisions to the relevant Cabinet Office Ordinance and FSA guidelines, the Exception concerning the IMBQI will require the applicant to have a streamlined personnel structure with fewer constituent members in comparison to the regular IMB.

2. Requirements Concerning Capital and Net Assets

In order to register for the regular IMB, both the applicant's capital and net assets should not be less than 50 million yen (JPY 50,000,000). The relevant Cabinet Order will be revised to implement the Exception by reducing the threshold amount for the IMBQI to 10 million yen (JPY 10,000,000) for both capital and net assets.

3. Requirements Concerning the Incorporation of the Stock Company

In the case of the regular IMB, the applicant should be either a company with a board of directors (which has at least three directors) and one or more corporate auditors, or a Company with Committees (as defined in Article 2, Item 12 of the Companies Act). With the Amendment of the FIEA, the Exception will only require the applicant company to have at least one director and one corporate auditor (or to be a Company with Committees).

(B) Definition of “IMBQI” and “QI”

Pursuant to the Amendment, the terms “IMBQI” and “QI” will be defined as follows:

1. IMBQI

The term “IMBQI” means the IMB that satisfies both of the following requirements:

- (1) the right holders with respect to all of the investment property managed under the IMB are comprised exclusively of QI; and
- (2) the total amount of the applicant's entire investment property is less than the amount specified by the Cabinet Order (thus far, this threshold amount has yet to be specified by the Cabinet).

2. QI

Subject to certain exceptions, the term “QI” refers to the following:

- (a) a Professional Investor (as defined in Article 2, Paragraph 31 of the FIEA), or an individual specified by the relevant Cabinet Office Ordinance as a person equivalent to a Professional Investor in light of his/her knowledge, experience and state of property; or
- (b) a person specified in the relevant Cabinet Order as having a close relationship with a Financial Instruments Business Operator (as defined in Article 2, Paragraph 9 of the FIEA).

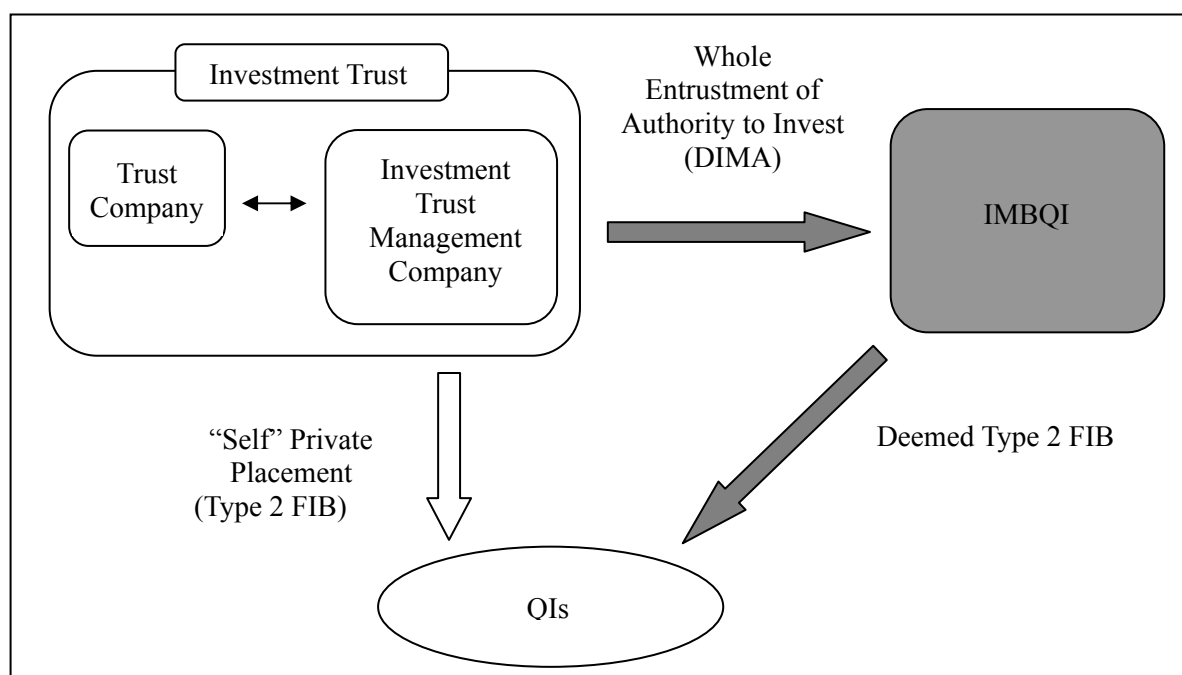
While the specific details pertaining to QI have not yet been fully clarified, the

FSA's April 2011 report entitled Reference Material (bill for the amendment of the FIEA, etc. for strengthening the foundations of the financial market and the financial industry) provides that individuals or corporations expected to hold a certain amount of financial assets should, among other persons, be listed and considered as QI.

(C) Easing the Registration Requirements for Certain Marketing Activities by IMBQI

In order to handle private placements of "Paragraph 1 Securities" (as defined in Article 2, Paragraph 3 of the FIEA), such as units in investment trusts, a person is required to register to be able to engage in the Type 1 FIB, which is subject to strict registration requirements. Under the Exception, however, the handling of private placements made exclusively against QIs by a person duly registered with respect to the IMBQI in respect of interests in the investment fund which is managed on a discretionary basis by such person will be deemed to be the Type 2 Financial Instruments Business ("Type 2 FIB"; as defined in Article 28, Paragraph 2 of the FIEA). It should be noted that the Type 2 FIB is subjected to far less stringent registration requirements than those imposed on the Type 1 FIB. A diagram illustrating this new structure is shown in Figure 1 below.

Figure 1



3. Effective Date

The Exception will come into effect on the day designated by the relevant Cabinet Order but no later than one year from the date of the promulgation of the Amendment (most likely in April or May 2012).

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Contact Information:

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