

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 of the capital markets and the financial industry” was promulgated into law (the relevant amendment of the Financial Instruments and Exchange Act (Act No. 25 of 1948) (the “**FIEA**”) is referred to as the “**FIEA Amendment**”). The FIEA Amendment provides for, among others, easing the registration requirements under 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). The FIEA Amendment, together with the revisions to the relevant Order for the Enforcement of the FIEA (the “**FIEA Enforcement Order**”), the Cabinet Office Ordinance regarding Financial Instruments Business, etc. (the “**Business Ordinance**”) and the Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc. (the “**FSA Guidelines**”), will come into effect on April 1, 2012.

I. Background

The current regulations impose strict registration requirements for the regular IMB, which requirements may seem burdensome and costly for applicants. Moreover, where a Registered Investment Manager (i.e., a person who is registered to engage in the IMB) handles private placements of interests in investment funds being managed by him/her under a Discretionary Investment Management Agreement (“**DIMA**”), such Registered Investment Manager is required to comply with a separate registration requirement to be able to engage in a 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**”).

II. Outline of the Exception

(A) Easing the Registration Requirements for the IMBQI

Under the FIEA 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

The Exception concerning the IMBQI permits the applicant to have a streamlined personnel structure with fewer constituent members in comparison to the regular IMB.

For instance, under the FSA Guidelines, the IMBQI does not need separate divisions for making investment decisions and for taking orders. The FSA Guidelines will also allow the IMBQI to outsource its compliance functions to a group company or a law firm.

In this regard, the FSA Guidelines provide, as basic consideration for examination of registration, that the examination of registration should be conducted in a flexible manner in light of the nature of the IMBQI of each applicant including its investment policy and the amount of the investment property.

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 FIEA Enforcement Order has reduced 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 (with 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 only requires 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 FIEA 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 properties managed under the IMB, are comprised exclusively of QI; and
- (2) the total amount of the applicant's entire investment property is not more than 20 billion yen (JPY 20,000,000,000).

2. QI

Subject to certain exceptions, the term “QI” refers to the persons set out in sub-paragraphs (1) and (2) below.

- (1) A Professional Investor (as defined in Article 2, Paragraph 31 of the FIEA), or an individual specified by the relevant Business Ordinance as a person equivalent to a Professional Investor in light of his/her knowledge, experience and state of property.

Article 16-3 of the Business Ordinance lists the following persons as a “person equivalent to a Professional Investor”:

- a. Employees’ pension funds or corporate pension funds with assets expected to amount to 10 billion yen or more, reasonably estimated from the status of the transactions thereof or any other circumstances.
- b. Juridical persons which fall under any of the following requirements:
 - (a) A juridical person whose assets are expected to amount to 300 million yen or more, reasonably estimated from the status of the transactions thereof or any other circumstances.
 - (b) A juridical person who is a General Partner, etc. (as defined in Article 16-3, Item 2 of the Business Ordinance) and whose assets, held by such juridical person as a General Partner, etc. under the Business Subject to Investment (as defined in Article 2, Paragraph 2, Item 5 of the FIEA) pertaining to Partnership Contracts, Silent Partnership Contracts or Limited Liability Partnership Agreements, are expected to amount to 300 million yen or more, reasonably estimated from the status of the transactions thereof or any other circumstances.
- c. The following individual persons:
 - (a) An individual person who satisfies all of the following requirements;
 - The assets held by the individual person are expected to amount to 300 million yen or more, reasonably estimated from the status of the transactions thereof or any other circumstances.
 - A period of one year has passed from the date when the individual opened an account with the Financial Instruments Business Operator, etc. (as defined in Article

34 of the FIEA), for transactions in securities or derivatives.

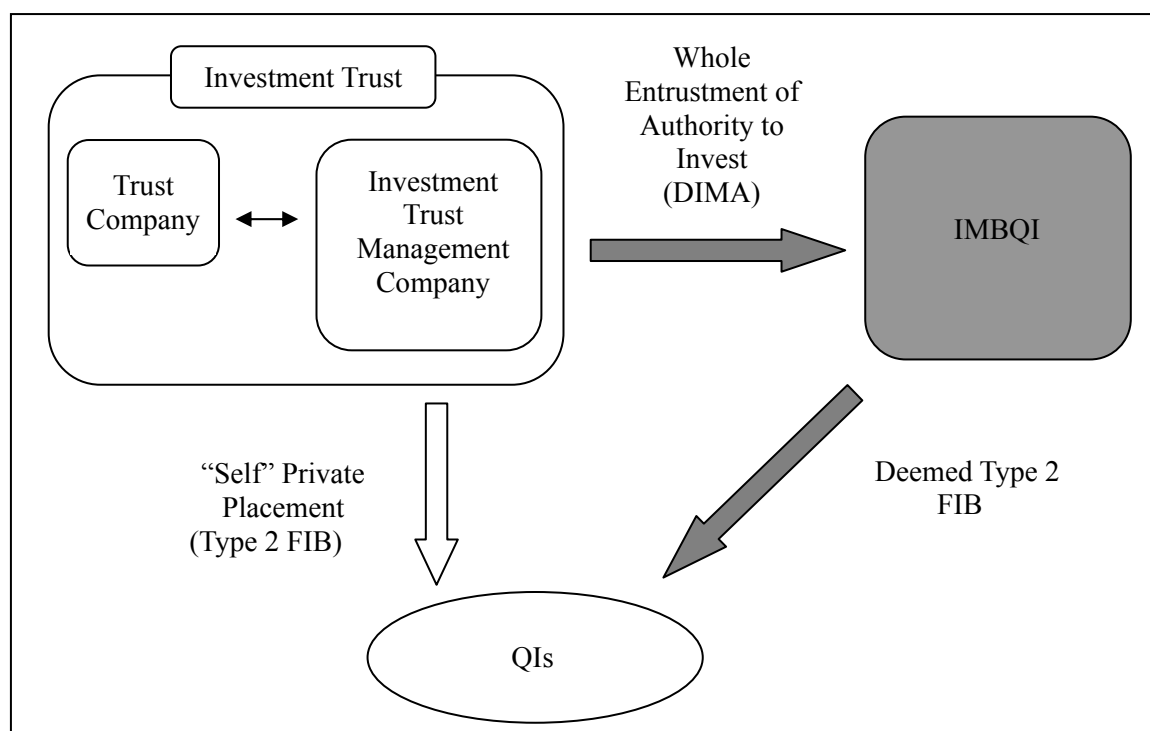
- (b) An Individual person who is a General Partner, etc. and whose assets, held by such individual person, as a General Partner, etc. under the Business Subject to Investment pertaining to Partnership Contracts, Silent Partnership Contracts or Limited Liability Partnership Agreements or a contract under the laws and regulations of a foreign state which is similar to any of the aforementioned contracts, are expected to amount to 300 million yen or more, reasonably estimated from the status of the transactions thereof or any other circumstances.
- (2) A person specified in the relevant FIEA Enforcement Order as having a close relationship with a Financial Instruments Business Operator (as defined in Article 2, Paragraph 9 of the FIEA) (including a person who intends to obtain registration under Article 29 of the FIEA).

Article 15-10-5 of the FIEA Enforcement Order lists the following persons as having a close relationship with a Financial Instruments Business Operator:

- a. An officer of the relevant Financial Instruments Business Operator.
- b. An employee, who falls under any of the items of Article 15-4 of the FIEA Enforcement Order, of the relevant Financial Instruments Business Operator.
- c. A parent company, etc. of the relevant Financial Instruments Business Operator.

(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 a Type 1 FIB, which is subject to strict registration requirements. Under the Exception, however, the handling of private placements made exclusively to QIs by a person duly registered as an IMBQI in respect of interests in investment funds managed on a discretionary basis by such person will be deemed to be a Type 2 Financial Instruments Business (“*Type 2 FIB*”; as defined in Article 28, Paragraph 2 of the FIEA). It should be noted that a Type 2 FIB is subjected to far less stringent registration requirements than those imposed on a Type 1 FIB. A diagram illustrating this new structure is set out in the next page.



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