



# Japan Establishes New Exempted Structures for Investment Management Businesses

Authors: Attorney-at-Law Tomohiro Kandori  
Attorney-at-Law Makoto Hibi

July 2021

---

## In brief

---

The Financial Services Agency of Japan will introduce new business structures to attract foreign investment management businesses, where they may enjoy exemption from registration as a financial instruments business operator. The new exemption structures will come into force by November 2021. In this Newsletter, we will provide an overview and describe the key requirements of these exemptions.

---

## In detail

---

### 1. Background

The Financial Services Agency of Japan (JFSA) has been eager to remove regulatory bottlenecks and enhance the attractiveness of financial and capital markets in Japan, by making it easier for foreign asset management business providers and professionals to enter the market. In order to make the Japanese market an international financial hub, JFSA has announced new exempted business structures to attract foreign investment management businesses. The new structures, which will be implemented by amendment to the Financial Instrument and Exchange Act (FIEA), will come into force by November 2021.

### 2. Registration requirements under the current FIEA for self-offering of interests in and management of partnership-type funds

Under the current FIEA, the self-offering of interests in collective investment schemes, including interests in partnership-type funds, falls under the category of a type II financial instruments business. Similarly, fund management of assets by investing over 50% of the cash contributed by the investors in securities or rights in derivatives transactions falls under the category of an investment management business.

In order to attempt self-offering or fund management of the interests in a collective investment scheme, it is necessary for a business to register as a financial instruments business (a type II financial instruments business and/or an investment management business) or entrust the handling of private placement and fund management authority to registered financial instruments business operators.

As an exception under the current FIEA, private placement and fund management of funds for professionals may be carried out without registration as the aforementioned financial instruments

business by submitting prior notification as a 'Special Business Notifier' to the competent authority ("Specially Permitted Businesses for Qualified Institutional Investors", Article 63 of FIEA).

In order to enjoy the exemption as Specially Permitted Businesses for Qualified Institutional Investors, domestic investors in the fund must include at least one Qualified Institutional Investor<sup>1</sup> (QII), and the other domestic investors are limited to 49 or fewer investors who fall under the category of 'Eligible Investors'<sup>2</sup>. A prior notification to JFSA or to the competent Local Finance Bureau must be made with the other requirements under the FIEA (including, but not limited to, the non-existence of disqualified investors) being met.

Businesses are also exempt from the need to register as an investment management business in the following cases:

- When a partnership-type fund is managed by a foreign investment management company and accepts investments in Japan only from investment management business operators and trust banks (Article 61(3) of FIEA); and
- When a partnership-type fund is a foreign-based fund and its Japanese investors are fewer than 10 QIIs or Special Business Notifiers of Specially Permitted Businesses for Qualified Institutional Investors, and the amount of investment by Japanese investors does not exceed one-third of the total amount invested in the fund (Article 16(1)(xiii) of the Cabinet Office Order on Definitions under Article 2 of the Financial Instruments and Exchange Act).

### 3. Overview of the requirements for the new exemptions

#### (1) Specially Permitted Businesses for Foreign Investors

The amendment to FIEA which will come into force by November 2021 introduces a new exemption from registration as financial instruments business operators ("Specially Permitted Businesses for Foreign Investors", Article 63-8 of the amended FIEA), in addition to the current exemption schemes. The general partners of partnership-type funds and other fund managers can enjoy the new exemption when they make a prior notification to JFSA with the following requirements<sup>3</sup> being met:

- (a) The investors in the fund shall fall under the following categories;
  - Investors who are not resident in Japan and who meet the specific requirements to be provided in a Cabinet Office Ordinance;
  - Qualified Institutional Investors and equivalent persons to be provided in a Cabinet Office Ordinance; or
  - Investors with a close relationship with those set out in the above categories.
- (b) A majority of the fund assets are invested by investors who are not resident in Japan;
- (c) The fund manager has a personnel structure and an internal system sufficient for conducting a financial instruments business in an appropriate manner;

---

<sup>1</sup> 'Qualified Institutional Investors' are persons specified by the Cabinet Office Order on Definitions under Article 2 of the Financial Instruments and Exchange Act as 'persons who have professional knowledge and experience in investment in securities'. They mainly include financial instruments business operators that engage in type I financial instruments businesses that fall under the category of securities-related businesses or investment management businesses, investment corporations, banks and other financial institutions that receive deposits or savings, insurance companies, and pension fund associations.

<sup>2</sup> 'Eligible Investors' are certain investors with investment decision-making capabilities and persons with close relationships with Special Business Notifiers. This category mainly includes financial instruments business operators, listed companies, corporations with stated capital or net assets of 50 million yen or more, individuals with assets of 100 million yen or more who opened an account for trading of securities at least one year ago, and corporations with assets of 100 million yen or more.

<sup>3</sup> The requirements mentioned here are key requirements only.

- (d) The fund manager has a business office in Japan; and
- (e) The fund manager appoints a local representative in Japan.

Unlike Specially Permitted Businesses for Qualified Institutional Investors, there is no requirement to have at least one QII as an investor in the fund, and no limitation on the number of investors under Specially Permitted Businesses for Foreign Investors. While this exemption assumes that primarily non-resident investors will invest in the fund, domestic QIIs and domestic investors with a close relationship with QIIs are also permitted to make investments into the exempted fund, as long as 50% or more of the fund assets are invested by non-resident investors.

## (2) Specially Permitted Businesses for Transition Periods

The amendment to FIEA also introduces a new temporary exemption (“Specially Permitted Businesses for Transition Periods”, Article 3-3 of supplemental provisions of the amended FIEA), where a foreign investment management company is permitted to engage in investment management business without registering as financial instruments business operator, for up to five years.

Under the Specially Permitted Businesses for Transition Periods, a foreign investment management company may enjoy exemption from the registration requirement if the company makes a prior notification to JFSA with the following requirements<sup>4</sup> being met:

- (a) The investors shall fall under the following categories;
  - Investors who are not resident in Japan; or
  - Investors with a close relationship with a foreign investment management company.
- (b) The foreign investment management company holds a license which is equivalent to an investment management business operator license under FIEA in another jurisdiction with a legal framework providing an equivalent level of investor protection to FIEA;
- (c) The foreign investment management company has a certain level of track record of managing funds;
- (d) Less than 50% of the fund assets managed by the foreign investment management company are invested into securities issued by Japanese issuers;
- (e) The foreign investment management company has a personnel structure and an internal system sufficient for conducting the financial instruments business in an appropriate manner;
- (f) The foreign investment management company has a business office in Japan; and
- (g) The foreign investment management company appoints a local representative in Japan.

Please be advised that the Specially Permitted Businesses for Transition Periods exemption is a temporary exemption which is anticipated to last for only five years from the date of enforcement.

---

## The takeaway

---

It is still unclear whether the new exemption structures will be widely embraced by foreign investment management businesses, as the amended FIEA requires them to hold a business office with a local representative in Japan, which might be a burden on them. In addition, the Specially Permitted Businesses for Foreign Investors exemption does not seem to be designed to promote fund-raising in Japan, considering its requirements on investors. Apart from the regulations under FIEA, tax issues

---

<sup>4</sup> The requirements mentioned here are key requirements only.

should also be considered. On the other hand, the amendment to FIEA provides businesses with a certain flexibility in structuring their funds in some cases. PwC Legal Japan can assist foreign businesses hoping to enter the Japanese market, in close collaboration with the PwC global network.

---

## Let's talk

---

For a deeper discussion of how this issue might affect your business, please contact:

### **PwC Legal Japan**

Dai-Ichi Tokyo Bar Association  
Otemachi Park Building, 1-1-1 Otemachi, Chiyoda-ku, Tokyo 100-0004

TEL: 03-6212-8001

Email: [jp\\_tax\\_legal-mbx@pwc.com](mailto:jp_tax_legal-mbx@pwc.com)

[www.pwc.com/jp/e/legal](http://www.pwc.com/jp/e/legal)

Tomohiro Kandori

Partner

Attorney-at-Law

[tomohiro.kandori@pwc.com](mailto:tomohiro.kandori@pwc.com)

Makoto Hibi

Attorney-at-Law

[makoto.hibi@pwc.com](mailto:makoto.hibi@pwc.com)

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2021 PwC Legal Japan. All rights reserved.

PwC refers to the PwC network member firms and/or their specified subsidiaries in Japan, and may sometimes refer to the PwC network. Each of such firms and subsidiaries is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.