

ClientAlert

Tokyo Financial Services Group

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Update on the Article 63 Exemption

This Client Alert is an update concerning the amendments to the exemption for Special Business Activities for Qualified Institutional Investors, etc. (the "**Article 63 Exemption**") set forth under Article 63 of the Financial Instruments and Exchange Law of Japan (the "FIEL"). This Client Alert supplements our Client Alert dated November 24, 2011 on the same topic (*see* <http://links.cecollect.com/711/1124/White%20&%20Case%20TFSG%20Client%20Alert%20-%202024%20November%202011.pdf>).

As part of the recent amendments (the "**Amendments**") to the FIEL advanced by the Financial Services Agency of Japan (the "**Japan FSA**"), the Japan FSA shall implement regulations that change both the manner and the contents of the notifications under the Article 63 Exemption effective as of April 1, 2012.

This Client Alert is an overview of responses of the Japan FSA to public comments on the Cabinet Office Ordinance concerning Financial Instruments Dealers dated as of February 10, 2012 and the Guidelines of Financial Instruments Dealers dated as of February 15, 2012 in relation to the Article 63 Exemption.

One of the key points that the Japan FSA clarified in its public comments was that the Amendments will apply to not only persons filing a notification under the Article 63 Exemption (the "**Article 63 Notification**") on or after April 1, 2012 but to persons who previously filed the Article 63 Notification as well. Thus, any general partner that has already filed a notification under the Article 63 Exemption will be required to file:

- (a) an amended Article 63 Notification that sets forth the following additional information:
 - (1) the name of the limited partnership for which the filer is acting as the general partner; and
 - (2) the name of at least one qualified institutional investor (*tekikaku kikan toushika*, as defined under Article 2, Paragraph 3, Item 1 of the FIEL and Article 10 of the Cabinet Order regarding Definitions under Article 2 of the FIEL, "**Qualified Institutional Investor**") that has invested in the limited partnership; and
- (b) a certificate of registered matters in respect of the general partner (*toukijikou shoumeisho*) or a document equivalent to such certificate.



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Thus, every existing filer of an Article 63 Notification will be required to submit both (a) and (b) above to the Kanto Local Finance Bureau prior to July 1, 2012.

If a filing party acts as the general partner for several limited partnerships to be covered under an Article 63 Notification, the filing party must notify the Kanto Local Finance Bureau of the name of each limited partnership for which it is acting as a general partner.

With respect to the obligation to identify the name of the Qualified Institutional Investor, the Japan FSA also confirmed that if the general partner cannot identify the Qualified Institutional Investor at the time of the notification filing, the general partner should clearly state "to be determined" in the relevant section. Subsequently, upon becoming aware of the identity of the Qualified Institutional Investor, the general partner should file an amendment of its Article 63 Notification as soon as possible to identify the relevant Qualified Institutional Investor.

Please note that the Japan FSA further clarified that it does not intend to disclose to the public the name of the limited partnerships or the name of Qualified Institutional Investor which have been identified in the Article 63 Notification, or any amended Article 63 Notification.

With respect to the obligation of the filing party to submit its certificate of registered matters of the general partner (or equivalent document), in its response to the public comments, the Japan FSA clarified that a certificate of incorporation issued by a foreign government would be deemed as such comparable certificate in Japan. However, it is unclear what other documents concerning a foreign company acting as the general partner will be viewed as equivalent to the certificate of registered matters of the company (i.e., the general partner) of a Japanese limited partnership.

In White & Case's continuing discussion with the regulators on this point, the Japan FSA noted that for a document to be viewed as the equivalent to the certificate of registered matters of a Japanese company (i.e. the general partner), it must disclose:

- (a) the name of the company;
- (b) the amount of the company's capital;
- (c) the name of its officers; and
- (d) the business address of the company.

The Japan FSA further noted that if the certificate of incorporation issued by the relevant foreign governmental authority does not cover all of the above items, the submission of a notarized affidavit issued by a corporate representative would also be necessary to evidence the missing information. They also confirmed that a document equivalent to the certificate of registered matters of a Japanese company would not require a Japanese translation in connection with the filing of the notification.

In consideration of the relatively narrow three month notification filing window commencing from April 1, 2012, White & Case recommends that all past filers under the Article 63 Exemption contact their Japan advisors to prepare the necessary submissions as described above at the earliest possible opportunity.

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