

ASSET MANAGEMENT BULLETIN

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Lowering the Entry Barrier for Foreign Asset Management Firms: Introduction of the “Financial Market Entry Office”

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I. Background of the Introduction of the Financial Market Entry Office

The Japanese government has stated its commitment to making its capital markets more attractive to foreign businesses and highly-skilled foreign professionals through strategic initiatives and attempts to create an environment conducive to foreign market entrants. However, requirements for regulatory applications and other documents to be submitted to the main financial markets regulator, the Financial Services Agency of Japan (the “**FSA**”) in the Japanese language or submitted together with Japanese translation, pose a high barrier to entry for foreign asset management firms.

To tackle this problem, on January 12, 2021, the FSA and Local Finance Bureaus (“**LFBs**”) established a single point of contact regulatory office, the “Financial Market Entry Office” (the “**Office**”) to handle the entire regulatory process from pre-application consultation, registration, to post-licensing supervision, with all communication available in English.¹ On the same day, the Cabinet Office Order on Financial Instruments Business, etc. (“**COOFIB**”) was amended to stipulate that documents required for registration and ongoing

¹ <https://www.fsa.go.jp/en/policy/marketentry/index.html>

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regulatory reports can be submitted in English without Japanese translation.² In response to these changes, the FSA updated the Guidebook for Registration of Investment Management Business and Other Financial Instruments Business (the “**Guidebook**”), which was originally published in January 2020 to explain the types of registration required for each of the major business schemes related to asset management business and provide an overview of the procedure for registration screening as well as an explanation on the requirements for registration.³ The updated Guidebook includes information on the Office and the flow of all-in-English registration procedures.

We are pleased to outline the functions of the Office and recent changes in registration procedures based on our experience as a legal counsel advising on the first registration utilizing the Office and the all-in-English procedure.⁴

II. Functions of the Office

The Office, as a single point of contact, handles the entire regulatory process from pre-application consultation, registration, to post-registration supervision for new asset management entrants. Communication with the Office is available in English and via online communication tools (online meetings).

Although the Office’s primary purpose is to support foreign asset management firms, the Office also serves as a contact point for any inquiry on procedures under financial laws and regulations in connection with the establishment of a business base in Japan by other types of foreign financial business operators.

1. Pre-application consultation

While the all-in-English registration procedure is only available to a foreign financial business operator which meets the eligibility requirements described in 2. below (i.e., asset management firms), the Office also accepts and responds to inquiries from other types of foreign business operators. Communication is available both in English and Japanese in the course of pre-application consultation on the interpretation/applicability of laws and

² <https://www.fsa.go.jp/en/policy/marketentry/List-of-documents.html>

Please note that the Commissioner of the FSA can demand submission of the translation of the outline of such documents if he/she determines it is necessary and appropriate to protect the public interest and investors.

³ <https://www.fsa.go.jp/en/policy/marketentry/guidebook.html>

⁴ https://www.fsa.go.jp/en/policy/marketentry/index_4.html

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regulations or business models and feasibility pertaining to the registration as a financial instruments business operator. The Office also accepts and responds to inquiries regarding the Guidebook.

In our experience, the pre-application consultation process follows the steps below:

- An initial call to the Office to start the pre-application consultation process.
- The Office sets up the first online meeting.
- The applicant sends explanatory documents prior to the meeting.
- In the meeting, the applicant has an opportunity to introduce itself and its members, and explain the background and purpose of the application.
- The consultation moves on to preparation of a document called Summary of Applicant for New Registration or its Change (the “**Summary**”).
- The applicant is required to prepare the Summary in consultation with the Office for the purpose of smooth confirmation of the legal requirements for the registration. The prescribed form of the Summary is available both in Japanese and English on the FSA’s website⁵ and the Summary can be submitted in English, including via email.
- After confirming necessary information by submission of the Summary and communication with the Office, the applicant prepares draft application documents and its attachments. The prescribed form of the application document in Japanese and English is also available on the FSA’s website,⁶ and can be completed and submitted in English.

2. Registration

All-in-English registration procedures are available to applicants which satisfy requirements (1) and (2) below:

- (1) the applicant is a newly entering business operator which seeks to obtain registration for any of the following businesses:
 - (i) Investment Management Business (Article 28(4) of the Financial Instruments and Exchange Act (“**FIEA**”));
 - (ii) Investment Advisory and Agency Business (Article 28(3) of FIEA); or
 - (iii) Type-II Financial Instruments Business relevant to asset management business which is:
 - a) Sales of units of a self-established investment trust or a fund (Article

⁵ Please see footnote 3.

⁶ Please see footnote 2.

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- 28(2)(i) of FIEA); or
- b) a Deemed Type-II Financial Instruments Business operated by the Asset Management Company of an Investment Corporation or by an operator of Investment Management Business for Qualified Investors (Article 196(2) of the Act on Investment Trusts and Investment Corporations and Article 29-5(2) of FIEA).
- (2) the applicant is:
- (iv) authorized to conduct asset management business or investment advisory business in a foreign jurisdiction or is a relevant company of such an entity; or
 - (v) an individual who has worked in an entity described in (i) above as a senior officer or employee (i.e. where he/she is named as a senior officer or an important employee in the application documents).

If an applicant does not satisfy the above requirements, the Office will refer the applicant to the appropriate contact point for registration at the competent authority (e.g. the competent LFB).

3. Post-registration supervision

The Office will conduct supervision in English over foreign asset management firms and other financial business operators that have completed registration procedures in English. Regulatory inspections of such firms will be also conducted in English. There are plans for the FSA to enhance its operational capacity as well as the effectiveness of its supervision and inspection in view of a possible increase in the number of the registered firms relying on this registration process.

Please note, however, that supervision and inspection in English are only available to business operators which have completed registration procedure in English, and operators which have been already registered using the original Japanese-language procedures will continue to be required to handle supervision and inspection in Japanese.

III. Documents which can be submitted in English

The amendment to COOFIB enables applicants to prepare and submit the following registration documents and ongoing reports in English without

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Japanese translation. The attachments to those documents can be also submitted in English without translation. Prescribed forms for certain documents are available on the FSA's website in both Japanese and English.⁷

| Document | Legal grounds | Prescribed form in English ⁸ |
|--|--------------------------------------|---|
| Application for registration | Article 5 of COOFIB | available |
| Notification of change to matters specified in application for registration | Article 20(1) of COOFIB | no specific form |
| Notification on change of content or method of business | Article 21 of COOFIB | no specific form |
| Application for a registration of change | Article 22(1) and (2) | available |
| Notification of deposit for operation | Article 25 (1) and (2) of COOFIB | available |
| Notification on conclusion of contracts in lieu of deposit for operation | Article 27(1), (2) and (4) of COOFIB | available |
| Notification of concurrent holding of officers' positions | Article 31 of COOFIB | no specific form |
| Notification of holding subject voting rights | Article 36 of COOFIB | under preparation |
| Notification about becoming a specified major shareholder | Article 38-2 of COOFIB | under preparation |
| Notification about becoming a major shareholder other than a specified major shareholder | Article 38-5 of COOFIB | under preparation |
| Notification of additional business | Article 69 of COOFIB | no specific form |
| Application for approval of additional business | Article 70(1) and (2) of COOFIB | no specific form |
| Application for confirmation of problematic conduct | Article 120 of COOFIB | no specific form |
| Business Report | Article 182(1) of COOFIB | under preparation |
| Explanatory Documents | Article 183(1) of COOFIB | under preparation |

⁷ Please see footnote 2.

⁸ As of May 7, 2021.

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| Application for approval on period before public inspection of explanatory documents | Article 190(1), (2) and (4) of COOFIB | no specific form |
| Application for approval on due date for submission of Business Report | Article 191(1), (2) and (4) of COOFIB | no specific form |
| Notification on suspension of business and other matters | Respective items of Article 201 and Article 202 of COOFIB | no specific form |
| Notification on discontinuance of business | Article 204(1) and (2) of COOFIB | no specific form |
| Notification of public notice on discontinuance of business | Article 205(3) and (4) of COOFIB | no specific form |
| Notification on specially permitted business for qualified institutional investors | Article 244(1) and (3) of COOFIB | under preparation |
| Notification of change to notified matters pertaining to specially permitted business for qualified institutional investors | Article 244-2 of COOFIB | under preparation |
| Notification where the business is no longer specially permitted business for qualified institutional investors | Article 245 of COOFIB | no specific form |
| Notification on discontinuance of specially permitted business for qualified institutional investors | Article 246 of COOFIB | no specific form |
| Application for approval of reclaiming of deposit for operation | Article 14(1) of Ordinance of the Cabinet Office and the Ministry of Justice on Financial Services Providers' Deposit for Operation ("OFSPDO") | under preparation |
| Notification of change in the place of retention of deposit for operation | Article 16(4) of OFSPDO | under preparation |

According to the Office, some required documents not listed above (such as

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internal rules) may also be submitted in English.

IV. Guidebook

The Guidebook was prepared and published to facilitate the smooth entry of financial instruments business operators by supporting registration applications and reducing the burden of their entry into the Japanese financial market.

It contains flowcharts to determine whether and what type of registration is required in accordance with the business schemes of potential applicants and explanations on required registration for common business schemes. It also shows what to expect at each step of the registration procedure with contacts and links to other information sources.

The Guidebook was amended in January 2021 to include explanation of different flows of registration procedures in English and Japanese.

V. Utilization of the new procedure

Mori Hamada & Matsumoto has assisted in completing the first registration using the newly introduced Office and the all-in-English procedure on April 16, 2021. The introduction of this procedure may be a breakthrough for the Japanese financial market, which has had difficulties in attracting foreign asset managers due to the costs of translation and staffing with Japanese-speaking personnel. As the first legal counsel to have experience with this innovative system, we look forward to supporting any firm interested in utilizing the procedure.

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PUBLICATIONS

- Article " Chambers Global Practice Guide - Investment Funds - Japan Law and Practice"
- Publication Chambers Global Practice Guides Investment Funds 2020
- Author Yasuzo Takeno, Ken Miura and Nobuharu Onishi (co-author)

NEWS

- **Lawyers from Mori Hamada & Matsumoto were included in the 12th edition of The Best Lawyers™ in Japan**

120 lawyers from our firm were included in the 12th edition of The Best Lawyers™ in Japan by Best Lawyers® survey. 4 lawyers were selected as "Lawyers of the Year" in the area of below.

"Lawyers of the Year"

Yasuzo Takeno - Investment and Investment Funds

- Fintech Practice

Yasuzo Takeno

- Investment and Investment Funds

Yasuzo Takeno

Ken Miura

Nobuharu Onishi

- Private Equity, Private Funds and Venture Capital Law

Yasuzo Takeno

Ken Miura

- **Top Ranking Received From The Legal 500 Asia Pacific 2021**

Mori Hamada & Matsumoto has been ranked in the top tier of recommended law firms in Japan, Myanmar and Thailand for several areas of practice in The Legal 500 Asia Pacific 2021 and the following lawyers have been recommended as "Leading individuals"

Leading individuals – JAPAN

- Investment funds: Ken Miura, Nobuharu Onishi, Yasuzo Takeno

- **Top Ranking Received From Chambers Asia-Pacific 2021**

Mori Hamada & Matsumoto and our lawyers are recognized in the practice areas named below in Chambers Asia-Pacific 2021.

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Lawyers

JAPAN

Investment Funds

Leading Individual: Yasuzo Takeno, Ken Miura, Nobuharu Onishi

➤ **Top rankings received from IFLR1000's thirtieth edition**

Mori Hamada & Matsumoto has been ranked in the top tier of recommended law firms in following category in Japan by IFLR1000's thirtieth edition. Thirty-one of the firm's lawyers have received prestigious rankings..

- Banking

Notable Practitioner: Yasuzo Takeno

- Investment funds

Notable Practitioner: Ken Miura

➤ **35 lawyers were selected as leading lawyers in asialaw Profiles "asia law Leading Lawyers 2021"**

35 lawyers were selected as leading lawyers in asialaw Profiles "asia law Leading Lawyers 2021". (29 lawyers from our Japan Office, 6 lawyers from our Bangkok Office.).

- Banking & Finance

Elite practitioner: Ken Miura

- Investment funds

Elite practitioner: Ken Miura

Distinguished practitioner: Yasuzo Takeno, Nobuharu Onishi

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