



Japan Regulatory Update

Japan

DT Legal Japan

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Immediate Actions to be taken by August 31, 2016 - the Article 63 Exemption

As covered in our past Client Alerts¹, the amendment to the Financial Instruments and Exchange Act of Japan (the “**FIEA**”) in March of this year resulted in a significant overhaul of the “Exemption for Special Business Activities Directed at Qualified Institutional Investors” (the “**Article 63 Exemption**”).

As the grace period for existing general partners operating under the Article 63 Exemption (the “**Article 63 Exemption Operators**”) is quickly coming to an end on August 31, 2016, we anticipate that most Article 63 Exemption Operators have already completed their own analysis as to whether they are required to continue to operate under this exemption.

This Client Alert will focus on those Article 63 Exemption Operators that will continue to operate under this exemption as of August 31, 2016 and provide a summary of the various actions which must be completed by such Article 63 Exemption Operators by such date.

As further discussed herein, the tasks must be completed by August 31, 2016 are significant and we strongly recommend that Article 63 Exemption Operators take the appropriate steps to properly comprehend the full scope of such tasks.

A. SUBMISSION OF THE REVISED ARTICLE 63 NOTIFICATION

Unless withdrawing, each Article 63 Exemption Operators will need to submit a revised form of their Article 63 Notification (“**Revised Article 63 Notification**”) to the Japan regulator by August 31, 2016. While the Revised Article 63 Notification is still effective immediately upon submission, its contents varies significantly from the prior form and numerous additional deliverables must now be included in such submission.

Firstly, with respect to the Revised Article 63 Notification itself, Article 63 Exemption Operators are required to include additional information regarding each limited partnership fund for which it is acting as a general partner (“**LP Fund**”). In the revised form, additional information must be provided as to the investment strategies of the LP Fund, the scope of target investments, the number and names of Qualified Institutional Investors subscribed to such LP Fund, etc.

Furthermore, on both the website of the Japan FSA, as well as the website maintained by the Article 63 Exemption Operator (as further explained in **Part C** below), the scope of information that will be publicly available has

¹ [“Kanto Local Finance Bureau issues Questionnaires to Article 63 Exemption Operators”](#) dated April 7 2016
[“Revisiting the Article 63 Exemption”](#) dated April 14 2016

greatly increased from the prior regime.

Lastly, the following deliverables must also be submitted with any Revised Article 63 Notification:

- Oath of the Article 63 Exemption Operator affirming the lack of criminal/regulatory sanctions against it;
- The constitutional document of the Article 63 Exemption Operator;
- Affidavit of the Article 63 Exemption Operator affirming the accuracy of certain corporate information of the Article 63 Exemption Operator;
- Resume, Oath and Affidavit of each officer of the Article 63 Exemption Operator;
- Oath, Certificate of Residence, and Certificates of the Japan Representative (please see below) affirming that such Japan Representative is not insolvent, has not registered for adult guardianship, etc.; and
- Other miscellaneous deliverables in relation to capital contributions made by the Japan limited partners to the LP Fund.

B. APPOINTMENT OF THE JAPAN REPRESENTATIVE

On or prior to August 31, 2016, each offshore Article 63 Exemption Operator will be required to appoint a representative in Japan (“**Japan Representative**”). The Japan Representative may be a law firm, accounting firm or any other third party provided that such entity/individual is a resident of Japan (*kyojyusya*). The primary role of such Japan Representative is to serve as a liaison between the Article 63 Exemption Operators and the Japan regulators (i.e., someone that the Japan regulator may query regarding the filings made). The Investment Management Group of DT Legal Japan is happy

to serve in this capacity for our clients.

C. CREATION OF A WEBSITE

Perhaps the most controversial of the new obligations on offshore Article 63 Exemption Operators is the requirement that they provide the Japanese public with access to the following documents through a website or alternative measures:

- A copy of the Revised Article 63 Notification (which may be redacted to exclude certain information); and
- A copy of a simplified version of each Annual Business Report (*jigyō hōkokusho*) that has been prepared and submitted by the Article 63 Exemption Operator.²

DTLJ has had frequent discussions with the Japan regulators on the details of such “alternative measures”, but as of this date, there does not appear to be any viable alternatives to creating a website for offshore Article 63 Exemption Operators. Based on this, offshore Article 63 Exemption Operators may have no other option but to create a website or ask its affiliates or related parties (e.g., the manager of the LP Fund) to upload the required documents on their website, where applicable. It should be noted that the address of such website must be listed in the Revised Article 63 Notification.

Furthermore, such website will need to be open to the Japanese public and limitations which would prevent the Japanese public from accessing the website will most likely be prohibited by the Japan regulator.

This requirement is particularly problematic to offshore Article 63 Exemption Operators which are licensed or registered in other jurisdiction (or relying on specific exemptions applicable in such jurisdictions) where the posting of any fund related documents on the internet may be

² The first Annual Business Report would not need be submitted until March 2018 for those having the fiscal year ending in December of this year.

deemed as a violation of such jurisdiction's securities laws. As a result of potentially conflicting obligations, due consideration must be given as to the manner by which such website of the Article 63 Exemption Operator is created and maintained.

D. NEW JAPAN LEGEND/TRANSFER RESTRICTIONS

With respect to those LP Funds where the general partner is still operating under the Article 63 Exemption, we do wish to note that the various Japan legends and transfer restrictions, etc. set forth in the relevant fund documents, should be amended to reflect the new regime.

As the August 31, 2016 deadline for the grace period soon approaches, it is recommended that Article 63 Exemption Operators take the proper steps to ensure that they make the necessary preparations regarding the new Article 63 Exemption regime. Please feel free to contact us if you have questions.

For anyone who did not receive this Client Alert (or is interested in prior alerts) and wishes to be placed on the mailing list for Japan regulatory updates issued by the Investment Management Group of DT Legal Japan, please do not hesitate to contact us.

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