

Q&A Concerning the Emergency Registration Exemption
for Foreign Financial Institutions / Asset Managers

(Temporary relief to address overseas business disruptions due to disaster or other reasons)

[Other temporary business operations]

(Q.1) Does this amendment prohibit or preclude the following?

- (a) A foreign financial institution to have meetings with group companies conducting registered financial business in Japan.
- (b) A foreign financial institution to have a short business trip to Japan based on a request from an affiliated company and temporarily conduct some of the business operation attributable to their home jurisdiction in Japan.

(Answer)

This amendment does not prohibit or preclude any business traveler of a foreign financial institution from temporarily conducting in Japan their business that is normally conducted in their home jurisdiction. However, when a business traveler is conducting relevant business operations for a sufficiently long period in Japan, for example, it could be deemed as conducting financial instruments business which would require registration as a Financial Instruments Business Operator.

[Visa]

(Q.2) Do officers and employees need to obtain a visa upon entry to Japan if all of the following conditions are met?

- (a) An officer or employee of a foreign financial institution who has a passport with a visa-exemption enters Japan for the purpose of business continuation;
- (b) Such officer or employee does not engage in any activities for which they receive remuneration in Japan; and
- (c) Their periods of stay do not exceed those stipulated in the arrangement of short-term stay with their home jurisdiction.

(Answer)

The applicant should follow the entrance formalities in accordance with the immigration procedures at their own responsibility.

[Tax]

(Q.3) If an officer or employee of a foreign asset manager falls under the following items, is the relevant office recognized as a permanent establishment (so called PE) under the tax law in Japan?

- (a) Enters Japan for the purpose of business continuation, and
- (b) Only conducts business continuity activities in a rented office or an office of an affiliated asset manager in Japan for a certain period of time (up to 90 days) and business activities for foreign customers from this office.

(Answer)

This amendment does not change the interpretation of the tax law. As tax law treatment is determined on a case-by-case basis, please contact a tax office if you have any questions.

[Advance application for the confirmation for registration exemption]

(Q.4) A natural disaster or any other incident that requires urgent responses under the business continuity plan (BCP) often occurs unexpectedly, and it is highly likely that the FSA may not be able to issue the confirmation for exemption as promptly as desired in such a situation. In order to secure the effectiveness of the BCP, is it possible to make advance application for the confirmation to obtain a certain level of assurance before it becomes or is likely to become difficult to continue business?

(Answer)

This emergency registration exemption is applicable under circumstances where a foreign financial institution is facing or is likely to face difficulties in continuing business in a foreign jurisdiction. However, in preparation for such circumstances, the FSA is ready to provide advice in advance upon receiving an application from a candidate, examine the application in advance, and make a decision promptly when the business operations in Japan become necessary.

[Days required from application to confirmation]

(Q. 5) How many days does this process take from application to confirmation?

(Answer)

If the application is examined substantially in advance, and there is no deficiency in the application, a decision on confirmation or rejection would be made approximately within three business days after receiving a written application.

[Extension and Reapplication]

(Q.6) Given that the duration for the exemption is up to 90 days, is it possible to apply for an extension, or renewal, if an applicant who has already obtained confirmation is compelled to continue their business in Japan beyond the initial 90 days?

(Answer)

If a disaster that makes it difficult to continue business in the home jurisdiction does not subside in 90 days, it is possible to obtain confirmation again and continue the business operations in Japan. In such a case, it is necessary to submit the application forms again to reapply for confirmation. However, if there is no change to the content of application other than the application date from the former application, the applicants can omit attachments by submitting a written pledge declaring that this is the case. Should the FSA find out that an applicant is using the exemption to conduct business in Japan for a longer term and not as a temporary refuge, the FSA may reject the application.

[Proxy application]

(Q.7) When a foreign financial institution undergoes procedures for obtaining confirmation for exemption, is it possible to have (a) its affiliated company having an office in Japan as a registered financial business operator, or (b) a Japanese registered financial business operator that outsources asset management to the foreign financial institution: provide advice on the business continuity setup; and/or prepare and submit an application for the exemption on behalf of the foreign financial institution?

If possible, is it necessary for the affiliated company or Japanese registered financial business operator to file a separate application or notification to the authority to this end?

(Answer)

The affiliated company and Japanese registered financial business operator mentioned above can provide consultations on or support in submitting an application. It is not necessary for them to file a separate application or notification to the FSA for providing that support. However, an application for confirmation must be filed under the name of the foreign business institution, not under the name of the affiliated company or Japanese registered financial business operator.

[Representative person in Japan]

(Q.8) Regarding the “representative person in Japan” referred to in Article 16, paragraph (5), item (iv) of the Cabinet Office Order on Definitions under Article 2 of the Financial Instruments and Exchange Act (the “Cabinet Office Order on Definitions”), is it possible to appoint a responsible

person, such as chief compliance officer, of a group company in Japan?

(Answer)

It is considered that the person with the highest title among the personnel engaging in business operations in Japan referred to in Article 16, paragraph (5), item (v) of the Cabinet Office Order on Definitions basically needs to be appointed as the “representative person in Japan.”

If the foreign financial institution is an affiliated company of a Japanese registered financial business operator, it does not matter if an executive of such Japanese registered financial business operator concurrently serves as the “representative person in Japan” for the foreign financial institution.

[Alternatives to legal documents in an emergency]

(Q.9) The purpose of this amendment is considered as a response to an urgent need. However, it is likely that applicants cannot promptly obtain the documents required under Article 16, paragraph (6), item (iv) of the Cabinet Office Order on Definitions if the national capital function is damaged seriously and public services is suspended by the disaster. What documents should be attached to the application in such a case?

(Answer)

This amendment aims to provide emergency escape measures for foreign financial institutions who have obtained permission or authorization for conducting business equivalent to Type I Financial Instruments Business or Investment Management Business¹ from their home authorities. Therefore, the FSA requires applicants to submit accompanying documents with the application to prove the fact that each applicant has obtained such permission or authorization from a foreign authority.

If the applicant is unable to attach the certification issued by a foreign authority, it may be replaced by other documents which can demonstrate the applicant's status objectively.

Specifically, for example, a copy of a public document prepared by a foreign authority that contains similar information or a list of permitted or authorized financial institutions posted on a foreign authority's official website may be used to check the applicants' status.

[Department in charge]

(Q.10) Does the Kanto Local Finance Bureau handle the confirmation process for exemption?

¹ For details on “Type I Financial Instruments Business” and “Investment Management Business”, please refer to Guidebook for Registration of Investment Management Business and Other Financial Instruments Businesses at <https://www.fsa.go.jp/en/policy/marketentry/guidebook.html>

(Answer)

The FSA handles the confirmation process for exemption. An application should be submitted to:

Securities Business Division, Supervision Bureau, FSA

Email: bcp@fsa.go.jp

Consultations concerning opening and expansion of business bases in Japan are also available at:

Financial Market Entry Office, FSA and LFBs

Email: marketentry@fsa.go.jp