

(Reference)

○ Cabinet Office Order on Definitions under Article 2 of the Financial Instruments and Exchange Act [Excerpt]

(Acts Excluded from the Scope of Financial Instruments Business)

Article 16 (1) The acts specified by Cabinet Office Order, referred to in Article 1-8-6, paragraph (1), item (iv) of the Cabinet Order, are those set forth in the following items:

(i) to (xvi) Omitted

(xvii) among the acts set forth in the items of Article 2, paragraph (8) of the Act, those that a person who is engaged in Type I financial instruments business or investment management business in a foreign state in accordance with the laws and regulations of the foreign state, and faces or is likely to face difficulties in continuing that business in the foreign state due to a disaster or other reasons, carries out in Japan in order to continue that business by obtaining confirmation from the Commissioner of the Financial Services Agency and by limiting the period.

(2) to (4) Omitted

(5) A person who intends to obtain confirmation referred to in paragraph (1), item (xvii) must submit a written application for confirmation containing the following particulars to the Commissioner of the Financial Services Agency:

(i) the trade name or name;

(ii) the location of the head office or the principal office and the principal business office or the principal office in Japan

(iii) the title and name of the representative person;

(iv) the name and contact information of the representative person in Japan;

(v) the titles and names of the personnel who will carry out, in Japan, the acts to be commenced by obtaining the confirmation (referred to as the "personnel engaged in business operations in Japan" in item (ii) of the following paragraph);

(vi) the name of the authority of the foreign state where the person is carrying out the relevant acts that the person intends to commence in Japan by obtaining the confirmation (limited to authorities that have signed the Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information under the International Organization of Securities Commissions), and the details of the permission or other administrative disposition that the person has received from that foreign authority;

(vii) the outline of the circumstances due to which it has become or is likely to become difficult to continue that business in a foreign state;

(viii) specific details of the acts that the person intends to carry out in Japan by obtaining the confirmation;

- (ix) the period during which the person intends to carry out the acts by obtaining the confirmation (not longer than three months);
 - (x) when intending to carry out any other business in Japan, the specific details of that business.
- (6) The following documents must be attached to a written application for confirmation referred to in the preceding paragraph; provided, however, that when it is impossible to attach the document set forth in item (iii), the relevant document may be replaced by attaching a document stating the reason therefor:
- (i) a document pledging the following particulars:
 - (a) that the person does not fall under any of Article 29-4, paragraph (1), item (i), (a) to (c) or item (ii) of the Act;
 - (b) that the acts that the person intends to carry out by obtaining the confirmation do not violate the laws and regulations of a foreign state;
 - (c) that the person will not carry out, in Japan, any acts set forth in the items of Article 2, paragraph (8) of the Act other than the acts that the person intends to carry out by obtaining the confirmation;
 - (d) that the person will appropriately establish a structure for observing the laws and regulations in Japan;
 - (ii) a document with which the personnel engaged in business operations in Japan pledges that the personnel does not fall under any of Article 29-4, paragraph (1), item (ii), (a) to (i) of the Act;
 - (iii) a document equivalent to a certificate of registered matters;
 - (iv) the resume of the representative person in Japan;
 - (v) a document proving that the person has received permission or other administrative disposition from the foreign authority referred to in item (vi) of the preceding paragraph.
- (7) A written application for confirmation referred to in paragraph (5) and accompanying documents under the provisions of the preceding paragraph may be prepared in English.
- (8) When an application for confirmation referred to in paragraph (1), item (xvii) is filed, the Commissioner of the Financial Services Agency shall make a disposition for the application promptly, except when the application needs to be corrected.
- (9) When having granted confirmation referred to in paragraph (1), item (xvii), the Commissioner of the Financial Services Agency shall publicize the trade name or name of the person who obtained the confirmation, the outline of the particulars set forth in paragraph (5), item (viii) regarding the confirmation, and the outline of the particulars set forth in item (ix) of the same paragraph and the particulars set forth in item (x) of the same paragraph.
- (10) When there are any change to the particulars set forth in paragraph (5), item (i) to item (v) or item (x), a person who obtained the confirmation referred to in paragraph (1), item (xvii) must notify the Commissioner of the Financial Services Agency to that effect in writing without delay.

(11) When a person who obtained the confirmation referred to in paragraph (1), item (xvii) falls under any of the following items, the Commissioner of the Financial Services Agency may rescind the confirmation:

- (i) when the person obtained the confirmation referred to in paragraph (1), item (xvii) by wrongful means;
- (ii) when any fact that differs from the particulars stated in the written application for confirmation referred to in paragraph (5) and accompanying documents under paragraph (6) is found;
- (iii) when the person violated laws and regulations in relation to the business operations pertaining to the act that the person carries out by obtaining the confirmation referred to in paragraph (1), item (xvii) or any business operations accompanying the former.