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■ New Investor Protections to Encourage Equity-based Crowdfunding

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SUMMARY

The Financial Instruments and Exchange Act of Japan (the "FIEA"), which regulates businesses involved in securities offerings, has recently been amended with the aim of promoting equity-based crowdfunding and providing appropriate investor protections.



DESCRIPTION

Under the FIEA, businesses involved in securities offerings are required to hold a Type1 Financial Instruments Business ("FIB") Licence (registration) (for offering corporate stocks, bonds or other types of liquid securities), or a Type 2 FIB Licence (for offering limited partnership interests, LLCs' shares or certain other types of illiquid securities), each of which has associated conduct rules, such as obligations to provide information to investors.

Recent amendments to the FIEA introduced crowdfunding regulations which expand the requirements for obtaining and maintaining a Type 1 or Type 2 FIB License for businesses offering securities online, etc. by:

- (i) Strengthening conduct rules, including requirements applying when conducting an Electronic Solicitation Agency Business^[1], such as establishing data processing operation control systems;
- (ii) Relaxing capital, asset and reserve requirements, and imposing certain conduct rules for obtaining and maintaining a Type 1 or a Type 2 FIB Licence when operating a "Small Amount" Electronic Solicitation Agency Business^[2]; and
- (iii) Imposing additional requirements when conducting an "Electronic Application-type" Electronic Solicitation Agency Business^[3] to:
 - a) conduct due diligence of issuers and their business plans;
 - b) explain how a situation where the aggregate value of the subscription applications does not reach, or exceeds the target fundraising amount would be handled;
 - c) reject contributions from investors where a target fundraising amount is specified as a condition to the securities issuance but not reached;
 - d) allow cooling-off periods for investors; and
 - e) periodically provide information to investors after subscription, etc.





Japanese equity-based crowdfunding platforms are currently mainly used for funding the development, manufacturing and distribution of domestically-sourced food and drinks, manufacturing high-end goods (such as furniture and traditional or modern crafts), agriculture, real estate businesses, and renewable energy and other projects; local governments and communities also promote regional businesses which use crowdfunding. The FIEA amendments are aimed at supporting these trends by enhancing public confidence in the investor protection regime for crowdfunding. In addition, as the regulations would apply to foreign crowdfunding platform providers seeking to raise funds in Japan for offshore investments, they may make those offshore investments more attractive to Japanese investors, though foreign platform providers should consider the cost of compliance with these requirements (in particular the cost of due diligence, which could be substantial) when considering raising funds in Japan, and bear in mind that they are likely to be required to have a business presence in Japan in order to make an offering of securities.

- [1] A securities offering where information on the securities is available online and/or communications with customers are made via email, online platform, etc.
- [2] An Electronic Solicitation Agency Business where the total value of the offered securities is less than JPY 100,000,000 and the subscription amount of any single investor is not more than JPY 500,000 (subject to certain aggregation rules).
- [3] An Electronic Solicitation Agency Business where investors' subscription applications are made via an online platform.

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