

Revised  
Japanese  
Regulations for  
Foreign  
Investment  
Funds Offered  
in Japan

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## ▣ REVISED JAPANESE REGULATIONS TO SIMPLIFY THE FORMAT AND CONTENT OF PROSPECTUSES OF FOREIGN INVESTMENT FUNDS OFFERED IN JAPAN

### **Introduction**

Regulations enacted in Japan in December 2009 will simplify the format and content of prospectuses which foreign investment funds are obliged to offer to investors in Japan. These regulations became effective on 1 July, 2010. We have summarised these new regulations below, focusing on Irish domiciled investment funds offered in Japan as foreign investment funds.

### **Pre-Existing Requirements**

Currently, under the Financial Instruments and Exchange Law of Japan (the "FIEL"), when a public offering of securities is made in Japan, the issuer of the securities must file a securities registration statement (the "SRS") with the Kanto Local Finance Bureau (the "KLFB").

The FIEL, and related cabinet orders and office regulations made thereunder (collectively, the "FIEL"), specified the matters that needed to be disclosed in the SRS; these included the investment objectives, the investment policies, the investment restrictions, the structure of the management and administration of the Irish investment fund, the distribution policy, the risk factors, the applicable fees and expenses, and the domicile of the fund.

It is common practice for the Japanese legal advisers to the Irish investment fund to prepare the draft SRS using the prospectus which has been filed with the Irish Financial Services Regulatory Authority in Ireland (the "Irish Prospectus"). When preparing the SRS, the Japanese legal advisers did not summarise the Irish Prospectus but used wording identical to that contained in the Irish Prospectus. That ensured that the SRS was consistent with the Irish Prospectus. Accordingly, despite a difference between the format of the SRS and that of the Irish Prospectus, the information included in both documents would be consistent.

In addition to the SRS, which is filed with the KLFB and not sent to any prospective or current investors in Japan, the Irish investment fund is required to prepare a Japanese language prospectus, to be provided to Japanese investors (the "Japanese Prospectus"). Similar to the matters which must be disclosed in the SRS, the FIEL specifies the matters that need to be disclosed in the Japanese Prospectus. Under the current regulations, the

contents of the Japanese Prospectus are almost the same as those required to be disclosed in the SRS.

The Japanese Prospectus is divided into two parts. One part of the Japanese Prospectus must be provided to a Japanese investor on or prior to the sale of securities through a public offering, regardless of whether or not the investor requests it (the "Mandatory Prospectus"). The second part of the Japanese Prospectus only needs to be provided upon request by the investor (the "Prospectus on Request"). Important information regarding the Irish investment fund, such as its investment objectives, its investment policies, its investment restrictions, the structure of the management of the Irish investment fund, its distribution policy and its risk factors are all disclosed in the Mandatory Prospectus. More detailed information is then disclosed in the Prospectus on Request.

### **New Requirements**

The new Japanese regulations make changes to the matters that need to be disclosed in the Mandatory Prospectus and the Prospectus on Request.

Under the pre-existing regulations, the Mandatory Prospectus contains information described in the first half of the SRS, and the Prospectus on Request must contain information described in the second half of the SRS. Accordingly, an investor who reads both the Mandatory Prospectus and the Prospectus on Request should, in effect, be getting almost all of the information contained in the SRS, the contents of which are almost identical to the contents of the Irish Prospectus. Under the pre-existing regulations, an Irish investment fund is not prohibited from combining the Mandatory Prospectus and the Prospectus on Request into single document. However, the new Japanese regulations will prohibit this.

The new Japanese regulations will also change the matters that need to be disclosed in the Mandatory Prospectus and the Prospectus on Request.

Under the new Japanese regulations, the Mandatory Prospectus will contain a brief summary of (i) the objects and nature of the Irish investment fund (such as its investment objective, investment policy, investment restrictions and distribution policy), (ii) the risk factors, (iii) the past performance data, (iv) procedures for subscribing for, and redeeming, shares or units and fees and expenses, while the contents of the Prospectus on Request will be almost identical to the SRS. Generally, the new Japanese regulations will require the Irish investment fund to keep its Mandatory Prospectus short and simple, similar to a simplified prospectus under the European UCITS regime. Under the new Japanese regulations a Mandatory Prospectus is normally expected to be less than 10 pages long. The new

Japanese regulations do not however specifically limit the number of pages of a Mandatory Prospectus.

The new Japanese regulations only apply to foreign investment funds structured as unit trusts and do not apply to foreign investment funds structured as variable capital companies.

### **Conclusion**

The current practice of preparing the Mandatory Prospectus by using a Japanese translation of the relevant parts of the Irish Prospectus will no longer be possible under the new Japanese regulations, and the Irish investment fund will need to summarise the wording in the Irish Prospectus in order to prepare a Mandatory Prospectus that meets the requirements of the new Japanese regulations.

Under the new Japanese regulations, the Mandatory Prospectus should contain only a short summary of information relating to the Irish investment fund, whereas the Prospectus on Request will include the same amount of information as is included in the SRS. Given that a Prospectus on Request is delivered only when an investor makes a request, an investor who does not make such a request will only receive a Mandatory Prospectus, which only includes a short summary of important information regarding the foreign investment fund. The Mandatory Prospectus provided to the investor will therefore be completely different from the Irish Prospectus.

It is expected that these new Japanese regulations will apply to any Japanese Prospectus prepared and used after 1 July, 2010. Both newly established Irish investment funds and Irish investment funds conducting a continuous offering by way of an SRS filed on or after 1 July, 2010 will be subject to the new Japanese regulations.

It is important to note that where the Irish investment fund is a UCITS, the Mandatory Prospectus must contain all of the information which is currently required to be contained in a simplified prospectus, as set out in Guidance Note 1 of 2005 'Publication of a Simplified Prospectus', issued by the Irish Financial Services Regulatory Authority. Furthermore, in relation to an Irish investment fund which is a non-UCITS, as well as being provided with the Mandatory Prospectus, a Japanese investor must also be offered the Prospectus on Request when the Mandatory Prospectus is delivered to them (rather than only being provided with it if they request it).

***We would like to acknowledge the assistance of Mori Hamada & Matsumoto in the preparation of this memorandum which has been prepared based on their advices.***

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