

**MEMO# 32449**

May 7, 2020

## **Japan Adopts Final Foreign Exchange and Foreign Trade Act (FEFTA) Rules**

[32449]

May 7, 2020 TO: ICI Members

ICI Global Members SUBJECTS: International/Global RE: Japan Adopts Final Foreign Exchange and Foreign Trade Act (FEFTA) Rules

As we previously informed you, on November 22, 2019, the Japanese National Diet passed an amendment bill to the Foreign Exchange and Foreign Trade Act (FEFTA) to expand the scope of transactions that will be subject to foreign investment review, notably lowering the threshold for requiring approval for the acquisition of shares of restricted companies from ten percent to one percent. The Japanese Ministry of Finance (MOF) was tasked with drafting the details of the requirements and the scope of exemptions for the financial services industry, following public consultation. The ICI submitted a letter to the MOF on April 11, 2020, generally expressing support for the proposed FEFTA provisions, but raising a few concerns relevant to regulated funds.[\[1\]](#)

On April 24, 2020, the Cabinet of the Government of Japan approved an order for implementation of the FEFTA (Order). The Order and other relevant rules and regulations (Rules) were promulgated on April 30, 2020, and entered into force on May 8, 2020. Full implementation of the amended FEFTA and the Rules and Regulations begins on June 7, 2020.[\[2\]](#)

The MOF has produced an English language document that explains the revised FEFTA and the Rules and Regulations.[\[3\]](#) This 20-page document provides readers with a good understanding of the new framework and the exemptions available to foreign financial institutions. We explain below how the issues that we raised in our April letter were resolved.

We stated in our April comment letter that we were pleased that (1) asset management companies that are subject to regulation in their home jurisdiction are one of the categories of foreign financial institutions (FFI) and are therefore able to utilize the blanket exemption, provided they comply with the specified conditions and (2) owners of assets, such as regulated funds, that have delegated investment decision-making authority and voting rights to an investment adviser (asset management company) do not themselves have a reporting obligation. These provisions have been retained in the final Rules.

In our comment letter, we advocated for the inclusion of all regulated funds[\[4\]](#) within the

definition of FFI because the proposed FFI definition would have included only certain regulated funds while excluding others based on their legal form. We are pleased that the MOF took our comments into consideration, and the Order now stipulates that registered investment companies equivalent or similar to those authorized, registered or licensed under the relevant Japanese law are eligible for the blanket exemption, and that, with regard to the types of registered investment companies, legal personality is not required. In addition, the Order specifies that the following are eligible for the blanket exemption: (1) registered investment companies established pursuant to the Investment Company Act of 1940, United States and (2) common funds or unit trusts managed by investment companies or Managed Companies and authorized in EU member states pursuant to Undertakings for the collective investment in transferable securities (UCITS) - Directive 2009/65/EC).[5]

In our comment letter, we requested that the MOF clearly state any and all applicable conditions for the FFI exemption and the general investor exemption in the final rules (including in any English translation) as we had heard that all investments would be subject to a broader “general condition” that provides that the regulated activity by the foreign investor is not for the purpose of taking an action that makes it difficult to implement a designated business in a continuous and stable manner. We understand that this condition remains in place.[6]

In our comment letter, we requested that the list of designated and core companies provided by the MOF be comprehensive and definitive and not for information purposes only. The MOF has not changed its position and maintains that under the FEFA, in principle, investors are required to determine whether they need to submit prior-notification or not, and that the list is provided to investors to assist them with making this decision.

Lastly, in our comment letter, we requested confirmation that the new requirements will apply only to regulated actions (i.e. share purchases) taken after the effective date. Item 277 of the Comment Response Document confirms that investors are not required to file prior notification on the stocks they own at the time of the commencement of full implementation of the new rules, even if the stocks exceed the 1% threshold. Prior notification is only required when investors make additional stock purchases resulting in their outstanding shareholdings being equal to or exceeding the threshold.

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#### **endnotes**

[1] See letter from Paul Schott Stevens, ICI President and CEO, to the Research Division, International Bureau, Ministry of Finance, dated April 11, 2020, *available at* <https://www.iciglobal.org/pdf/32384a.pdf>.

[2] The official web portal of the Government of Japan is *available at* <https://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDDETAIL&id=395122004&Mode=2>. MOF’s responses to the comments received on the proposed rules are *available at* <https://search.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000201775> (Comment

Response Document).

[3] The MOF has provided an English language summary of the final Rules and Regulations, available at [https://www.mof.go.jp/english/international\\_policy/fdi/20200424.htm](https://www.mof.go.jp/english/international_policy/fdi/20200424.htm).

[4] The term “regulated funds” includes US funds, which are comprehensively regulated under the Investment Company Act of 1940 (Investment Company Act), and non-US funds, that are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors, such as funds domiciled in the European Union and qualified under the UCITS Directive (EU Directive 2009/65/EC, as amended), Canadian investment funds subject to National Instrument 81-102, and investment funds subject to the Hong Kong Code on Unit Trusts and Mutual Funds.

[5] See Item 183 in the Comment Response Document.

[6] Although Item 184 in the Comment Response Document provides that the exemption conditions are stipulated in the Public Notice, and no other conditions will be applied, we understand that the general condition remains applicable to FFI and general investors, based on the Japanese version of the Order and Rules.