

**MEMO# 33495**

April 23, 2021

# Japan Amends the Financial Instruments and Exchange Act to Attract Foreign Asset Managers

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TO: ICI Global Members

ICI Global Pacific Chapter

ICI Global Regulated Funds Committee SUBJECTS: International/Global

Operations RE: Japan Amends the Financial Instruments and Exchange Act to Attract Foreign Asset Managers

Under the leadership of Mr. Yoshihide Suga, the Financial Services Agency of Japan (JFSA) has, since September 2020, proactively introduced a number of new policies and measures to attract foreign asset managers into Japan and further elevate Japan's status as a global financial center in the post-pandemic world. These new measures include tax reforms for asset management firms and their employees, the launch of the "Financial Market Entry Office" to provide a "one-stop" English consultation and assistance service to foreign asset managers planning to set up offices in Japan, and immigration reform for highly-skilled professionals.[\[1\]](#)

On March 5, 2021, the Suga Cabinet submitted a bill[\[2\]](#) (Bill) to the National Diet of Japan proposing to amend the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended) (FIEA) to provide two new types of licensing exemptions for foreign asset managers intending to open offices in Japan. This memorandum provides a brief explanation of the proposed licensing exemptions and the next steps for foreign asset managers.

## 1. Simplified Entry for Foreign Asset Managers

Under the FIEA, foreign asset managers wishing to engage in solicitation or offering of investments in a partnership-type fund are required to register as Type II broker-dealers and investment managers with the JFSA. Pursuant to the proposed licensing exemptions, a foreign asset manager can be exempt from Type II broker-dealer and investment management registration requirements (Simplified Entry Scheme) provided that certain conditions regarding the fund operator and underlying fund investors are met.

The licensing exemption offered under the Simplified Entry Scheme is in some respects similar to that provided under the "Special Business Activities for Qualified Institutional Investors" in Article 63 of the FIEA (Article 63 Exemption), which is a popular exemption for private equity funds, real estate funds, and other types of funds that are structured in a partnership form with limited liquidity. There are, however, some major differences between the two exemptions. Unlike the Article 63 Exemption, the Simplified Entry Scheme specifically requires the foreign asset manager to have an office and a representative in Japan and have certain human resource and internal control systems in place. Investor eligibility requirements are also more restrictive. Fund investors should be "primarily" non-Japan residents. Where there are Japanese resident investors, they must be Qualified Institutional Investors (QIIs)[\[3\]](#) or parties closely related to the asset manager. The minimum percentage of investments coming from non-Japan resident investors will be determined in the relevant implementing regulations to be issued by the JFSA.

## 2. Licensing Moratorium for Foreign Asset Managers Who Are Registered with Home Regulators

A foreign asset manager would be eligible for a licensing moratorium for a period of up to five years provided that it has met certain eligibility requirements, including being registered with its home regulator with regard to its investment management business and having been in the investment management business for a certain period, to be defined by the JFSA in the implementing regulations. Similar to the Simplified Entry Scheme, a foreign asset manager relying on the licensing moratorium must have an office in Japan and have in place adequate human resources and an effective internal control system. Further, the foreign asset manager would not be permitted to conduct investment management activities in its Japan office involving Japanese investors nor manage investments primarily in shares issued by Japanese companies. The asset manager could only carry out investment management activities for Moratorium Foreign Investors.[\[4\]](#) This moratorium scheme is available for funds organized as corporations, trusts, or managed accounts (investment management under a discretionary investment agreement). Under the Bill, this scheme would expire five years from the effective date of the amendments in the FIEA.

## 3. Next Steps

The Bill is expected to pass during the current 204th Diet Session, scheduled to conclude on June 16, 2021. Once enacted, the two new exemptions will provide foreign asset managers a more flexible and attractive channel to set up operations in Japan. As the Bill only provides a framework for both schemes, upon the National Diet passing the Bill, the JFSA will propose detailed implementing regulations and guidance and will take comments from the public, expected to be in the summer of 2021. The amendments to the FIEA will be implemented at a date designated by the JFSA, but no later than six months from the date of promulgation. In other words, the new preferential treatment could become available as early as the end of 2021.

ICI Global will continue to monitor the developments and keep members apprised of the public consultation opportunity.

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**endnotes**

[1] See Provisional Translation of the "New Economic Measures," available at <https://www.fsa.go.jp/en/financialcenter/excerpt.pdf>

[2] The Bill submitted to the National Diet is available (only in Japanese) at <https://www.fsa.go.jp/common/diet/index.html>.

[3] QIIs are persons having expert knowledge of and experience with investment in Securities. See FIEA at Article 2(3)(i) of the FIEA, available at <https://www.fsa.go.jp/common/law/fie01.pdf>.

[4] As defined in the Bill, Moratorium Foreign Investors refers to foreign corporations, individuals who are residents of a foreign country, closely related parties of the foreign investment manager, and other investors deemed the equivalent of the foregoing under the JFSA's implementation regulations.