



ICGN

International Corporate Governance Network

Research Division
International Bureau
Ministry of Finance
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Tokyo 100-8940, Japan

By email: gaitame-kaisei@mof.go.jp

12 April 2020

Re: Consultation on Draft Rules and Regulations of the Foreign Exchange and Foreign Trade Act

Dear Madam or Sir,

The International Corporate Governance Network (ICGN) is pleased to respond to the Ministry of Finance (MoF) consultation on Draft Rules and Regulations of the Foreign Exchange and Foreign Trade Act (FEFTA). Our response to this consultation draws from and builds from past dialogue on this issue, in particular our most recent letter of 20 February 2020 to the MoF¹. ICGN is a global membership organization led by institutional investors responsible for assets under management in excess of US\$52 trillion. Our mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies worldwide.

Japan is a very important market for ICGN and its members, many of whom have significant investment holdings in Japanese companies. ICGN has worked closely with prominent Japanese institutions including the Financial Services Authority, the Tokyo Stock Exchange and the Keidanren in supporting positive changes in Japanese corporate governance and stewardship. ICGN serves the important role of representing the voice of overseas investors who hold over 30% of the Tokyo Stock Exchange market capitalisation.

ICGN respects the Japanese government's sensitivities relating to national security and the ownership of Japanese companies, and we recognise that countries in other jurisdictions globally have measures in place that seek to inhibit undue foreign influence in key companies or sectors of national interest. However, with regard to the proposed FEFTA amendments we remain concerned that the measures are disproportionate. We believe they would create unnecessary limitations and complications for investors in ways that will impact negatively Japanese corporate governance, investor stewardship and the attractiveness of Japanese financial markets. We are also concerned that the motivations behind these changed amendments might extend beyond protecting Japanese national security interests to include inhibiting overseas shareholder activism more generally.

We have reviewed the English consultation document, which was helpful, though we did not find its format to be user friendly or self-explanatory in all cases. We do recognise positive changes that are presented in the consultation document by creating the new category of "Public Pension Fund/Sovereign Wealth Fund" and applying a 10% ownership threshold

¹ See ICGN comment letter:
https://www.icgn.org/sites/default/files/2.%20ICGN%20letter%20to%20MOF%20re%20FEFTA_2022_0_0.pdf

under certain conditions. We appreciate this development and think it is appropriate for both pension funds and sovereign wealth funds.

At the same time, we believe the distinction between “foreign financial institutions” and “general investors” is not clear; for example, some ICGN members are asset owners that have their own asset management business. Further clarity is required. We are also disappointed with the new exemption conditions “d” and “e” on page four of the consultation document relating to core sectors’ business activities. We believe this is a negative development and goes against the spirit of good corporate governance and investor stewardship.

Other key points of feedback follow below.

Scope of affected companies and sectors

We believe there is still a need for greater clarity about the companies or sectors that be affected by these amendments. We understand that the industrial sectors subject to prior approval are those which judged to bear material risks to the national security of Japan. It is our expectation that any identified sectors or companies should be strictly, and clearly, linked to questions of national security—and should not be decided for other purposes.

Prior Notification for Certain Actions (PN-CA)

Voting and making shareholder proposals are core stewardship responsibilities for investors, now coming under the category of “Certain Actions” that require Japanese authorities to process PN-CA applications within five business days. However, it has been reported that the MoF does not allow for on-line applications and does not accept applications in English. In practice, would have the effect of discouraging voting and shareholder proposals by non-Japanese investors. It is important that the fundamental ownership rights of overseas investors are not marginalised.

Conditions for prior notice exemption

We are not aware of similar requirements by other major developed countries in their internal direct investment regulations. We are deeply concerned that these requirements would potentially decrease appetite of overseas investors to invest in Japan.

The first condition would prevent overseas investors from appointing related candidates to serve on Japanese boards and thereby oversee the executive officers of investee companies. This would have the effect of limiting a fundamental right of shareholders guaranteed by the Companies Act in Japan. Without appropriate oversight by shareholders, this limitation can easily lead to reduced discipline of corporate management of Japanese companies and would deprive investors of opportunities for stewardship—particularly at times when investor input is needed.

The second condition prevents investors from proposing the sale, transfer or disposition of business units at shareholders’ meetings. This also compromises fundamental rights of shareholders guaranteed by the Companies Act in Japan. It is a common and legitimate practice for investors to discuss or suggest a potential disposal of inefficient businesses in their stewardship activities and at shareholders’ meetings in order to promote sustainable medium-to long-term corporate value. This should not be constrained.

Additional conditions for prior exemption on Core Designated Sectors

We object to the new proposed exemption conditions “d” and “e” as presented in page 4 of the consultation document. Board committees serve an important function in Japan and other markets to monitor potential conflicts of interests in corporate governance, remuneration and nomination. This additional condition “d” would prevent overseas investors from appointing related candidates to serve on committees and thereby oversee the executive officers of investee companies. Without appropriate oversight by shareholders, this limitation can easily lead to reduced discipline of corporate management of Japanese companies and would deprive investors of opportunities for stewardship—particularly at times when investor input is needed.

The second additional condition “e” prevents investors from shareholder engagement in a written form which is one of the most typical methods of engagement taken by overseas investors. The proposed restriction is too broad and would disadvantage foreign investors by stifling stewardship activities.

We sincerely hope the MoF and others in the Japanese regulatory sector will take into considerations these serious concerns from Japan’s important overseas investor base.

We hope these comments are useful in your deliberations. If you would like to follow up with us with questions or comments, please contact me or ICGN’s Policy Director George Dallas by email at george.dallas@icgn.org.

Yours faithfully,



Kerrie Waring

**Chief Executive Officer
International Corporate Governance Network**