

For those who start to work in Japan

Request for Your Cooperation for Compliance with
the Regulations of Deemed Export Controls

November 2021

Trade Control Department

The Ministry of Economy, Trade and Industry (METI)

The Government of Japan

Background

- The Ministry of Economy, Trade, and Industry (“METI”) has clarified the scope of deemed export controls under the Foreign Exchange and Foreign Trade Law (“FEFTA”) based upon the recommendations by the METI’s advisory committee on export controls (the “Clarification”).
- The Clarification makes a part of sensitive technology transfers from company to its employees under control of the FEFTA. Even though the Clarification does not impose a new burden of license application on those who start to work in Japan, **the organizations that you belong to need your cooperation to comply with the FEFTA.**
- This handout shows simplified outline of the Clarification and your requested actions under it so that those who do not have legal background could understand the outline. It would be much appreciated if you refer to the following administrative notifications and relevant materials to get the details of the Clarification.
- **The Clarification is an essential measure to national security, and the Government of Japan sincerely appreciates your understandings and cooperation.**

References

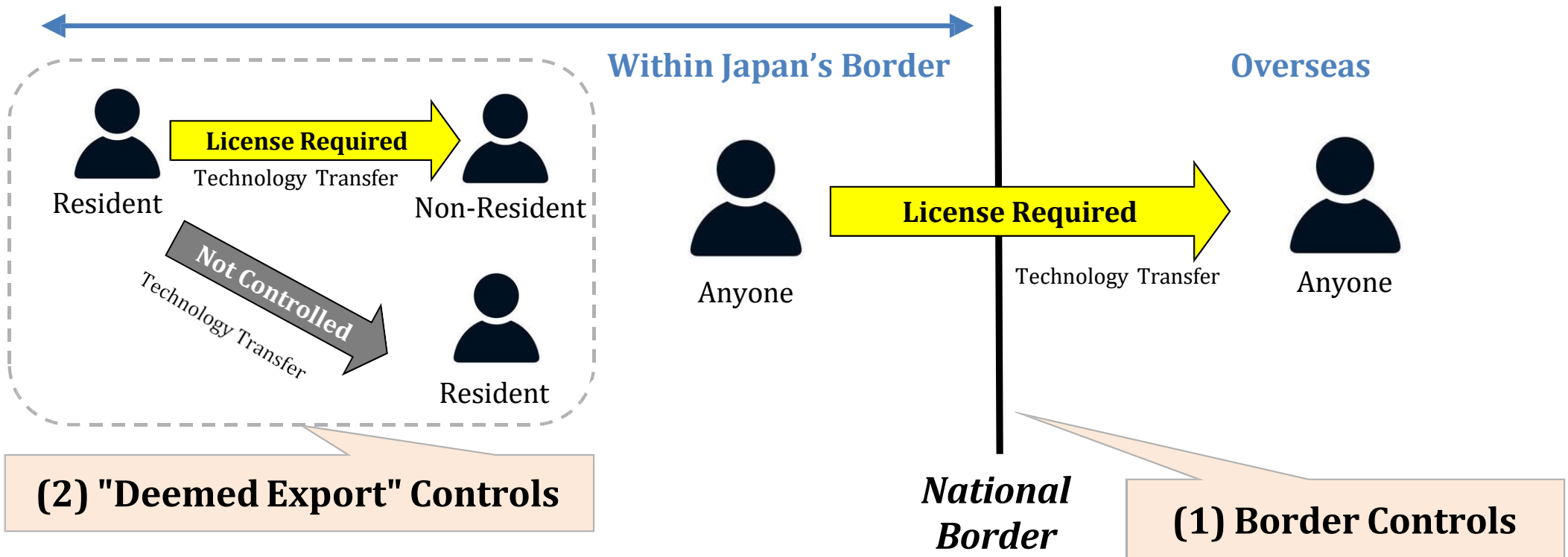
- Clarification of "Deemed Export" Controls
- Questions and Answers on Clarification of "Deemed Export" Controls
- “Notification for Transactions or Acts of Transferring Technology Requiring Permission pursuant to • Article 25 (1) of the Foreign Exchange and Foreign Trade Act and Article 17 (2) of the Foreign Exchange Order”
※This notification is so called “Notification for Technology Transfer”

You can find the materials above from “参考資料” of the web site for Security Export Control in Japan.

<https://www.meti.go.jp/policy/anpo/anpo07.html>

What is a "deemed export" controls ?

- Under the FEFTA, the transfer of sensitive dual-use technology is controlled from national security perspectives. Technology transfer categorized in (2) below is so-called "**deemed export.**"
 - (1) cross-border technology transfer (Border controls)
 - (2) technology transfer from a "resident" to a "non-resident" (Deemed Export Controls)
- **The advisory committee pointed out that the technology transfer to a "Resident" under the significant influence of a "Non-Resident" should be controlled as the deemed export.**

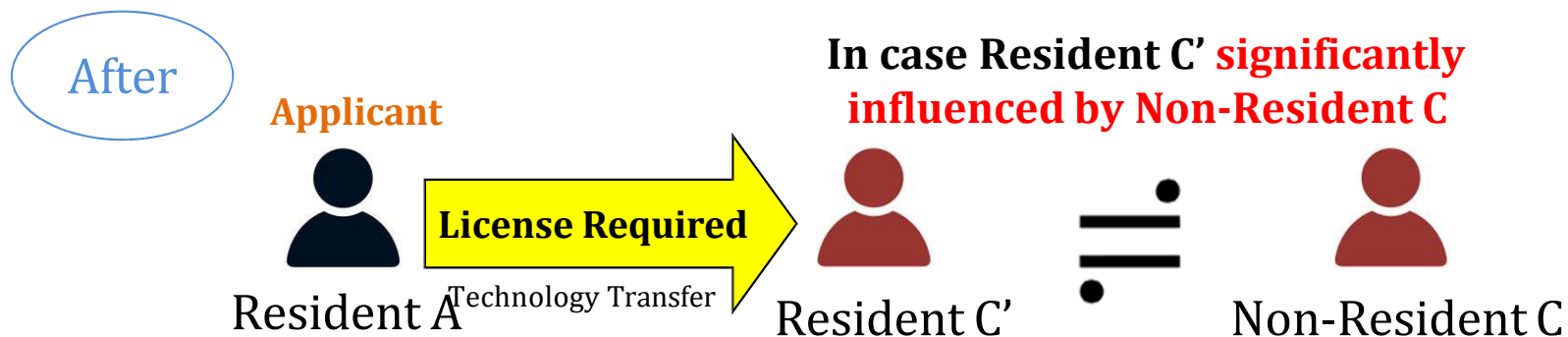


Overview of the Review on Deemed Export Controls

- Based on the recommendations by the advisory committee, METI has clarified that the technology transfer to a "Resident" under the significant influence of a "Non-Resident" (i.e., a person falling under the "Specific Categories". cf. Page 4) is deemed to be the controlled transfer to a "Non-Resident" under the FEFTA.
- In accordance with the FEFTA, your organization is required to confirm whether or not a recipient of the controlled technology falls under the "Specific Categories."



Clarification



What is the “Specific Categories” ?

- The “Specific Categories” stands for the following categories 1 to 3. For the precise provisions, please refer to the "Notification for Technology Transfer" 1(3)(サ).
- Please be noted that **a person falling under the “Specific Categories” is not necessarily regarded as a person of concern from national security.**



Category 1

Person under the control of a foreign government, corporation or university **by contract**

Case 1: Technology transfer to an employee at a Japanese corporation who is also hired by a foreign corporation* (except a group corporation of the Japanese corporation)

* Foreign-affiliated corporation in Japan is not recognized as a foreign corporation.

Case 2: Technology transfer to a board or auditing member at a Japanese corporation, who is also a board member or a auditing member at a foreign corporation* (except a group corporation of the Japanese corporation)

* Foreign-affiliated corporation in Japan is not recognized as a foreign corporation.



Category 2

Person substantially under the control of foreign government **by economic interests**

Case 1: Technology transfer to a student receiving a scholarship from a foreign government

Case 2: Technology transfer to a researcher, joining a state-sponsored recruiting program, and receiving a large amount of grants or living expenses from a foreign government



Category 3

Person acting in Japan under **instructions** of a foreign government

Case 1: Technology transfer to a student acting in Japan under instructions or requests of a foreign government

Requests for New Employees in Corporations

- Request #1: Cooperation with checking applicability of the “Specific Categories”
 - You, regardless of nationality, are requested to confirm the applicability of the “Specific Categories” to your employer at the time of employment if you might be in a position to access sensitive dual-use technology controlled under the FEFTA. Please refer to Appendix 1 for a letter of confirmation.
 - Please make a necessary report or notification in accordance with the rules of your organization for, such as, subsidiary business or receipt of money.
 - Please be noted that your organization requests a letter of confirmation for compliance with the regulations of the FEFTA, not for misuse of your personal information. Regardless of nationality, all persons, including Japanese, are requested to make confirmation, and it is not intended to discriminate foreign nationals.
- Request #2: Cooperation in technology transfer to others (including other employees)
 - When you transfer controlled technologies to others during your work, that transfer is deemed to be effectuated by the organization that you belong to. Therefore, please follow the instructions of the organization for compliance with the FEFTA when you transfer controlled technologies to others.

Requests for New Employees in Corporations

- **What we would like you to understand**

- When your organization considers that you might fall under the “Specific Categories,” your organization is required to obtain a license from the METI to transfer the controlled technologies to you.
- Please be noted that your organization might not be able to provide controlled technology immediately after your entry to obtain a license, and, in case of license denial from national security perspectives, your organization might not provide the controlled technology.
- Please be noted that your organization controls technology transfer as requirements under the FEFTA, and your organization does not intend to treat you neither unfairly nor disadvantageously.

Contact for Inquiries

- The Clarification has been led by METI, and your organization takes necessary measures in accordance with METI's requests for the compliance with the FEFTA.
- METI would appreciate your inquiries about the detailed information.

○ Inquiry about the applicability of the Specific Categories and the measures to confirm, etc.

 Security Export Control Administration Division: bzl-minashi-QA@meti.go.jp

○ Inquiry about the license applications, etc.

 Security Export Licensing Division: bzl-qqfcbf@meti.go.jp