Regulation of Foreign Investment in Japan

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A Practice Note discussing the legal regime governing foreign investment in companies and industries in Japan. It sets out the key legislation regulating foreign investment in Japan, including the types of transactions and industries affected by such legislation and the authorization process, as well as related anti-money laundering laws and ownership disclosure requirements.

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In addition to applicable anti-trust or merger control rules potentially impacting acquisitions or investments, cross-border transactions may also trigger foreign direct investment rules in the target's jurisdiction. Counsel representing parties in cross-border acquisitions or investments must be aware of the types of transactions or protected industries that may trigger foreign investment notification or approval requirements, and the potential impact such requirements may have on the deal timeline or the parties' ability to close the transaction.

This Note provides an overview of the legal regime governing foreign investment in companies and industries in Japan. It sets out the key legislation regulating such investments, the various types of foreign investment transactions that are subject to regulation, the roles and powers of the relevant regulatory authorities, and the penalties for non-compliance. It also summarizes related anti-money laundering (AML) laws and ownership disclosure requirements (and their application to foreign entities).

This Note focuses on transactions where a foreign entity buys, or takes a stake in, a company incorporated in Japan or its business and assets. It does not comment on any specific restrictions in Japan relating to:

- Merger control, antitrust, and competition laws which are not dependent on the nationality of the acquiror or investor.
- Multinational free trade agreements or bilateral investment treaties.

For more information on merger control rules and competition law affecting acquisitions in Japan, see Country Q&A, Merger Control in Japan: Overview.

Unless otherwise stated, a reference in this Note to:

- BOJ means the Bank of Japan.
- Cabinet Ordinance means regulations promulgated by the Prime Minister and competent Ministers to implement laws.
- FDIs means foreign direct investments.
- FEFTA means the Foreign Exchange and Foreign Trade Act of Japan (Law No. 228 of 1949, as amended).
- FSA means the Financial Services Agency of Japan.
- IDI Ordinance means the Cabinet Ordinance on Inward Direct Investments, etc. (Cabinet Ordinance No. 261 of October 11, 1980, as amended), enacted for the purpose of implementing the provisions of the FEFTA.
- IDI Order means the Order on Inward Direct Investments, etc., enacted for the purpose of implementing the provisions of the FEFTA and the provisions of the IDI Ordinance.
- JETRO means Japan External Trade Organization.
- KLFB means the Kanto Local Finance Bureau.
- METI means the Ministry of Economy, Trade and Industry.
- MOF means the Ministry of Finance.
Legal Framework for Foreign Investment in Japan

There is no legislation in Japan that directly prohibits foreign investment in a Japanese company. However, a wide range of FDIs in Japan are subject to prior notification or post-investment reporting requirements (see Types of Transactions Subject to Restrictions). Under the FEFTA, an FDI is called an Inward Direct Investment (see Inward Direct Investments). Certain acquisitions of shares or equity in Japan from another foreign investor are also subject to prior notification or a post-investment report (see Specified Acquisitions).

Under the FEFTA, when a foreign investor (see Foreign Investors) acquires shares in a Japanese company in a transaction that is considered an Inward Direct Investment or a Specified Acquisition, it is required to file a notification with the Japanese government via the BOJ, subject to limited exemptions. If the target of the FDI is a Japanese publicly listed company that conducts business in certain business sectors that may impact Japan's national security or public welfare (see Designated Business Sectors), the foreign investor who intends to acquire 1% or more of the shares of the investee company is required to file a notification of stock purchase prior to the acquisition of shares unless the foreign investor otherwise meets an exemption. If the investee company does not conduct any business in any designated business sector, it is sufficient to file a post-facto investment report when the foreign investor acquires 10% or more of the shares of the investee company. See Foreign Investment Notification and Authorization Process. Similar notification requirements apply to Japanese non-listed companies (see Relevant Inward Direct Investments).

The foreign investment regime in Japan is governed by the following legislation:

**FEFTA**

Chapter V. Inward Direct Investments, etc. (Article 26 - Article 46), including:

- Article 27 (Notification and Recommendation of Modification Regarding Inward Direct Investment, etc.).
- Article 27-2 (Special Provisions for Notification of Inward Direct Investment, etc.).
- Article 28 (Notification and Recommendation of Modification Regarding Specified Acquisition).
- Article 28-2 (Special Provisions for Notification of Specified Acquisition).
- Article 29 (Order for Measures).

Chapter VI-II. Reports, etc. (Article 55 – Article 55-9), including:

- Article 55 (Report of Payment or Receipt of Payment).
- Article 55-5 (Report of Inward Direct Investment, etc. and Specified Acquisition).

Chapter IX Penal Provisions, including:

- Article 70.
- Article 71.
IDI Ordinance

Chapter II Inward Direct Investments, etc. (Article 2 - Article 4-4), including:

- Article 3 (Notification and Service of Recommendation of Modification Regarding Inward Direct Investment, etc.).
- Article 3-2 (Matters Concerning Special Provisions for Notification of Inward Direct Investment, etc.).
- Article 4 (Notification and Service of Recommendation of Modification Regarding Specified Acquisition).
- Article 4-3 (Matters Concerning Special Provisions for Notification of Specified Acquisition).

Chapter III-2 Reports (Article 6-3 – Article 6-5), including:

- Article 6-3 (Report of Inward Direct Investment, etc. and Specified Acquisition).
- Article 6-5 (Reports Based on the Provisions of Article 55-8 of the Act).

IDI Order:

- Article 3 (Notification of Inward Direct Investment, etc.).
- Article 3-2 (Matters Concerning Special Provisions for Notification or Inward Direct Investment, etc.).
- Article 4 (Notification of Specified Acquisition).
- Article 4-3 (Matters Concerning Special Provisions for Notification of Specified Acquisition).
- Article 6-2 (Report of Inward Direct Investment, etc. and Specified Acquisition).
- Article 7 (Report Based on the Provisions of Article 6-5 of the Cabinet Ordinance).

The BOJ also published a FEFTA Q&A (Inward Direct Investments and Specified Acquisition) (only available in Japanese).

In addition, laws applicable to certain specific industries, such as broadcasting, telecommunications, and aviation, impose fixed maximum foreign shareholding ratios and other limitations (see Industry Sectors in Japan with Additional Notification or Approvals).

Other Legislation Affecting Foreign Investment

Restrictions on Cross-Border Remittance and Currency Exchange

In principle, cross-border remittances and currency exchange in Japan can be made without restriction.

However, the Japan government may impose an obligation to obtain permission to make or receive a payment or to trade a foreign means of payment if any of the following circumstances occur:
• It is necessary for Japan to:
  • implement a treaty or any other international agreement; or  
  • contribute to international efforts for international peace.

• The Cabinet makes a decision (such as asset freezing of individuals who are related to certain designated countries) pursuant to Article 10, Paragraph 1 of the FEFTA.

• It is necessary to maintain Japan's balance of payments equilibrium.

• It is necessary to ensure the implementation of the provisions of the FEFTA.

(Article 16, Paragraph 1 to 3 and Article 21, Paragraph 1, FEFTA.)

Additionally, making or receiving a remittance equivalent to more than JPY30 million is subject to a post-notification (Article 55, FEFTA).

**Measures to Promote Foreign Direct Investment in Japan**

To introduce new investments, human resources, technologies, and business methods, and to enhance and activate the growth of Japan and regional economies, the Japan government has launched several investment initiatives.

**Strategy for Promotion of Direct Foreign Investment in Japan**

In June 2021, the Council for Promotion of Foreign Direct Investment in Japan adopted the "Strategy for Promoting Foreign Direct Investment in Japan" and set a target to double FDIs to JPY80 trillion by 2030. This Strategy has set three basic pillars:

• Creation of a New Digital Green Market and Building of an Innovation Ecosystem.

• Acceleration of the Development of Business Environments in Response to Global Environment Changes.

• Development of an Investment Environment through Public-Private Partnerships Utilizing Regional Strengths.

Each ministry has adopted measures to seek these objectives. For example, the METI and the JETRO have implemented the "Regional Business Conference (RBC) Projects" to promote FDIs to attractive regional business and provide support to domestic cities participating in RBC Projects to invite and negotiate with foreign and foreign-affiliated companies.

Moreover, the FSA and the Local Finance Bureaus jointly opened the Financial Market Entry Office and provide foreign financial companies with financial licensing consultation, acceptance of English licensing applications, and ongoing supervision of operations, with all communications available in English. Furthermore, special tax incentives regarding corporate tax, inheritance tax, and personal income tax for foreign asset managers have been implemented to allow them to easily conduct similar business in Japan. Preferential immigration treatment is also available for "Highly-Skilled Professionals" and related people in asset management businesses.

Corresponding to such efforts, the Tokyo Metropolitan Government (TMG) provides support for foreign companies and entrepreneurs that start a business in Tokyo. TMG has adopted the "Global Financial City: Tokyo" Vision 2.0 and promotes many measures, including support to financial technology companies and asset managers.
Act for Promotion of Japan as an Asian Business Center
The METI provides the following incentives to new R&D and headquarters operations conducted in Japan by global companies certified by the competent minister under the Act on Special Measures for the Promotion of Research and Development Business, etc. by Specified Multinational Enterprises (the "Act for Promotion of Japan as an Asian Business Center"):

- Assistance for fundraising by the Small and Medium Business Investment & Consultation Co., Ltd. (also covering small and medium-sized stock companies with capital not less than JPY300 million).
- Acceleration of examinations and proceedings for patent applications.
- Shortened waiting period for prior notification for inward direct investment in regulated industries.
- Acceleration of entry examinations for the Certificate of Eligibility for Status of Residence applied for by foreign nationals who intend to work in Japan.

Other Incentives for Foreign-Affiliated Companies
As of 1 May 2022, the following incentive programs are also sponsored by the METI for foreign-affiliated companies:

- Developing Biopharmaceutical Manufacturing Sites to Strengthen Vaccine Production project.
- Strengthening Program for Pharmaceutical Startup Ecosystem project.
- Development of Regional Data Centers project.
- Research and Development Project of the Enhanced Infrastructures for Post-5G Information and Communication.
- Securing Domestic Production Sites for Advanced Semiconductors project.
- Subsidies for Promoting the Introduction of Clean Energy Vehicles and Infrastructure.

How Foreign Investment Is Governed in Japan

Types of Transactions Subject to Restrictions

Inward Direct Investments
A Foreign Investor (see Foreign Investors) will be required to file a prior notification and a post-investment report, subject to certain exemptions, if the Japanese investee company or any of its direct or indirect subsidiaries (including companies whose voting rights are controlled by 50% or more) engages in any of the designated business sectors in Japan (see Designated Business Sectors) and the Foreign Investor conducts one of the following acts (an "Inward Direct Investment"):  

- Acquisition of shares or equity in a non-listed company.
- Transfer of shares or equity in a non-listed company from a Foreign Investor holding those shares prior to becoming a non-Japan-resident.
• Acquisition of shares in a listed company that results in a Foreign Investor holding 1% or more of the listed company's shares (determined by aggregating the number of shares held by the acquirer, held by closely related persons of the acquirer (see Closely Related Persons), and under management of the acquirer or the closely related persons).

• Acquisition of voting rights in a listed company that results in a Foreign Investor holding 1% or more of the listed company's voting rights (determined by aggregating the number of voting rights held by the acquirer under its or another's name, exercised by the acquirer, and held by closely related persons of the acquirer).

• Consent given by the Foreign Investor and its closely related persons (a "Consenter") for a substantial change of business purpose or certain matters having a substantial influence over the listed company's management:
  • For a substantial change of business purpose: one-third or more of voting rights; and
  • For certain other matters: 1% or more of voting rights.

• Establishment of a Japan branch or substantial change of types or purpose of business of a Japan branch.

• Lending money (excluding bank loans) exceeding JPY100 million in value to a company having its principal office in Japan for a term exceeding one year.

• Transfer of a business from a company located in Japan or succession to a business through any of the forms of transaction, that is, a business transfer, absorption-type company split (kyusyu bunkatsu) or merger.

• Any action equivalent to one of these actions, such as:
  • Discretionary investment management investing in shares in an investee listed company;
  • Foreign Investor A delegates all necessary authority to invest in shares in an investee listed company and authority to exercise or instruct the exercise of voting rights to Foreign Investor B, and Foreign Investor A no longer can exercise voting rights or other shareholder rights; and
  • Foreign Investor B and its closely related persons hold 1% or more of the shares or voting rights.

If the investee company does not engage in any designated business sector, the Foreign Investor will be required to file a post-investment report for the Inward Direct Investment. (See Foreign Investment Notification and Authorization Process.)

"Consent" for purposes of an Inward Direct Investment generally means to exercise affirmative votes to an agenda at a meeting of shareholders and may include the instructing of the exercise of affirmative votes. "Matters having a substantial influence over the listed company's management" includes a proposal to:

• Appoint a Consenter as a director or auditor.

• Transfer all or part of the investee company's business.

• Transfer all or part of the shares or interests in a subsidiary of the investee company.

• Merge or split the investee company.

• Distribute a business of the investee company or its subsidiary, or shares in a subsidiary of the investee company, as dividend of surplus.

• Discontinue a business of the investee company.
• Dissolve the investee company.

Specified Acquisitions
When a Foreign Investor acquires shares or equity in a non-listed company from any other Foreign Investor(s), the acquiring Foreign Investor will be subject to prior notification and a post-investment report if the investee company or any of its direct or indirect subsidiaries engage in a designated business sector (see Designated Business Sectors), with limited exceptions (see Foreign Investment Notification and Authorization Process). If the investee company does not engage in a designated business sector, no notification or report is required (although, if the seller in the acquisition is a Japan-resident, the resident may be required to file a post-investment report as a "capital transaction").

Foreign Investors
Under FEFTA, the following persons are deemed Foreign Investors when conducting Inward Direct Investments or Specified Acquisitions and are subject to the prior notification or post-investment reporting requirements:

• A non-Japan-resident individual.

• A foreign company or any other organization.

• A Japanese company with 50% or more of its voting rights directly held by:
  • non-Japan-resident individuals;
  • foreign companies or organizations;
  • other Japanese companies with 50% or more of their voting rights held by non-Japan-resident individuals or foreign companies or organizations; or
  • Japanese subsidiaries (as defined in the Companies Act) of other Japanese companies with 50% or more of their voting rights held by non-Japan-resident individuals or foreign companies or organizations.

• A partnership where:
  • 50% or more of the contribution was made by Foreign Residents; or
  • a majority of its general partners are Foreign Resident(s) or partnership similar thereto.

• A Japanese company or any other organization in which non-Japan-resident individuals account for the majority of its officers or a majority of its officers having the authority to represent.

A "Foreign Resident" means any of the following:

• Non-Japan resident individuals.

• Foreign companies or organizations.

• Other Japanese companies with 50% or more of their voting rights held by non-Japan-resident individuals or foreign companies or organizations.
• Any company or any other organization in which non-Japan-resident individuals account for a majority of its officers or a majority of its officers having the authority to represent.

• A partnership equivalent thereto.

With respect to Japanese companies with foreign ownership, the following diagram published by the MOF illustrates the concept underlying the determination of Foreign Investor status:

Source: Ministry of Finance website (Rules and Regulations of the Foreign Exchange and Foreign Trade Act (24 April 2020), page 15.)

For more information regarding who should file a prior notification in the case of investment partnerships, see Box, Investment Partnerships.

Closely Related Persons
Under FEFTA (as specified by a Cabinet Ordinance), a "closely related person" means a person having either:

• A permanent economic relationship based on ownership of shares with the acquirer of shares, acquirer of voting rights, or Consenter.

• A family relationship.

• Any other special relationship.

(Article 26, Paragraph 4, FEFTA and Article 2, Paragraph 19 of the IDI Ordinance.)

Examples of closely related persons would be direct or indirect parent companies which hold 50% or more of the shares of the Foreign Investor, direct or indirect subsidiaries with 50% or more of their voting rights held by the Foreign Investor, or officers of the Foreign Investor.

Designated Business Sectors
Listed companies in Japan are classified into three categories by their business sectors:

• Companies conducting business activities only in non-designated business sectors.
• Companies conducting business activities in designated business sectors other than core sectors.
• Companies conducting business activities in core business sectors.

The MOF has published and periodically updated the List of Classifications of Listed Companies regarding the Prior-notification Requirements on Inward Direct Investment under the Foreign Exchange and Foreign Trade Act for the reference of Foreign Investors.

"Core Designated Business Sectors" that pose a particular risk to Japan's national security include weapons, aircraft, nuclear facilities and fuels, space, dual-use technologies that can be diverted to military use (such as artificial intelligence and robotics), cybersecurity, electricity, gas, telecommunications, water supply, railway, and oil. Specific parts of the following business sectors are classified as core designated business:

• Cybersecurity includes cybersecurity-related services (such as network security monitoring and software) and service of the program specially designed for critical infrastructures.
• Electricity includes general electricity transmission and distribution utility, electricity transmission utility and electricity generation utility that own a power plant with maximum generation capacity of 50,000 KW or more.
• Gas includes general gas/specified gas pipeline service, gas manufacturing, LP gas service that own a storage facility or core cylinder filling station.
• Telecommunications include telecommunication carriers that provide service across multiple local municipalities.
• Water supply includes water supply services supplying to more than 50,000 people and bulk water supply services with a capacity of supplying over 25,000# per day.
• Railway includes railway service operating public facilities/infrastructures which are stipulated under the Armed Attack Situations Response Act.
• Oil includes oil refinery, oil storage business, crude petroleum and natural gas production.

"Non-Core Designated Business Sectors" include cybersecurity, electricity, gas, telecommunications, water supply, railway, oil, heat supply, broadcasting, public transportation, biological chemicals, security services, agriculture, forestry, fisheries, air transportation and maritime transportation.

With respect to cybersecurity, electricity, gas, telecommunications, water supply, railway and oil, parts of these business sectors not otherwise classified as core designated businesses are classified as non-core designated businesses.

Foreign Governments
In principle, foreign governments and state-owned enterprises are not eligible for any exemptions from a prior notification requirement (see Exemptions for Prior Notification for Share Purchase). However, if Sovereign Wealth Funds and Public Pension Funds ("SWFs") are deemed to pose no risk to national security, such SWFs are eligible for the regular exemption if accredited by the MOF (see Regular Exemption).

If SWFs apply for accreditation, the MOF will review whether:

• The SWFs’ investment activities are purely for economic returns.
• The SWFs’ investment decisions are independently made from their governments.
If the MOF determines these SWFs would not cause any risk to national security, the MOF will sign a Memorandum of Understanding (MOU) with the SWFs to grant the accreditation.

The information as to which SWFs have been accredited and the terms and conditions of the MOU are not publicly available. However, considering the burden to go through the prior notification procedures, applying for an MOU and accreditation by the MOF would be worthwhile for SWFs to consider.

**Foreign Investment Notification and Authorization Process**

A Foreign Investor who conducts an Inward Direct Investment or a Specified Acquisition may be required to file a prior notification (and a post-investment report) or merely a post-investment report through the BOJ to the MOF and the competent ministries supervising the business sector engaged in by the investee company.

The MOF and the competent ministries are authorized to:

- Review a prior notification.
- Extend or shorten the waiting period during which the Inward Direct Investment or Specified Acquisition must not be conducted.
- Issue a recommendation to modify or discontinue the Inward Direct Investment or Specified Acquisition.
- Order a modification or discontinuance of the Inward Direct Investment or Specified Acquisition.
- Rescind the recommendation or order.

The BOJ functions as a contact agent for the filing.

Foreign Investors can file a prior notification or post investment report by physically delivering a hard copy of these documents to the BOJ or through the BOJ online system. If a Foreign Investor is a non-resident in Japan, the Foreign Investor must file these documents through an agent resident in Japan. If a Foreign Investor wishes to file these documents through the BOJ online system, they must obtain an ID, password, and a client certificate before using the BOJ online system. The website portal is available only after installing the client certificate.

**Prior Notification – General**

A Foreign Investor must file a prior notification when the Foreign Investor intends to conduct Inward Direct Investments or a Specified Acquisition that require the examination of whether it would either:

- Undermine national security, disturb the maintenance of public order, or interfere with the protection of public safety.
- Have a significant adverse effect on the smooth operation of the Japanese economy.

(Article 27, Paragraph 1 and Paragraph 3, and Article 28, Paragraph 1 and Paragraph 3 of the FEFTA.)

These scenarios are deemed an "Inward Direct Investment, etc. Involving National Security" (Article 27, Paragraph 3, Item 1 of the FEFTA). Other equivalent situations are listed in Article 27, Paragraph 3, Item 2 and Item 3 of the FEFTA.
An Inward Direct Investment, etc. Involving National Security includes, among others, Inward Direct Investments in Core-Designated Business Sectors (Article 3-2, Paragraph 2, Item 3 of the IDI Ordinance; Article 3-2, Paragraph 2 of IDI Order).

The Foreign Investor who has made a prior notification must not conduct the Inward Direct Investment or the Specified Acquisition until 30 days have passed from the day when the prior notification was received by the BOJ. If the MOF and the competent ministries determine that the Inward Direct Investments or the Specified Acquisition do not fall within the category of those requiring examination, the MOF and the competent ministries will generally shorten the waiting period to two weeks. Additionally, the MOF and the competent ministries may further shorten the waiting period to four business days (Article 27, Paragraph 2 and Article 28, Paragraph 2 of the FEFTA and Article 10, Paragraph 2 of IDI Order).

If the MOF and the competent ministries consider it necessary to examine the Inward Direct Investments or the Specified Acquisition, the MOF and the competent ministries may extend the waiting period by up to four months (or up to five months if the Council on Customs, Tariff, Foreign Exchange and Other Transactions informs that, in light of the nature of the case, it would be difficult for the Council to state its opinion within the four-month period).

Prior Notification for Share Purchase
When a Foreign Investor invests in a company that engages in a business classified in any designated business sector, the following are interpreted as Inward Direct Investments or a Specified Acquisition and may be subject to a prior notification:

- The acquisition of any shares or equity in a non-listed company.
- The acquisition of shares or voting rights in a listed company that results in the Foreign Investor holding 1% or more of the shares or voting rights in the listed company.

When a Foreign Investor invests in a company that engages in a business classified in any non-designated business sectors, a prior notification will not be required.

Exemptions for Prior Notification for Share Purchase
A blanket exemption from the prior notification requirement is available for foreign financial institutions and a regular exemption is available for general investors (including SWFs and public pension funds accredited by the authorities). No exemption is applicable for investors with a record of sanction due to violation of the FEFTA and foreign government and state-owned enterprises (except those who are accredited by the authorities) (see Foreign Governments).

Blanket Exemption
Foreign financial institutions which are subject to regulations and supervision under financial regulatory laws in Japan or other jurisdictions are eligible for a "Blanket Exemption" from the prior notification requirements with respect to investments into Japanese listed companies. These foreign financial institutions include:

- Securities firms.
- Banks.
- Insurance companies.
- Asset management companies.
- Trust companies.
- Registered investment companies (including mutual fund and exchange-traded fund).
• High-frequency traders registered with the FSA (while other high-frequency traders are eligible for the regular exemption).

If a Foreign Investor is a foreign financial institution, it is exempted from a prior notification requirement under the Blanket Exemption if it complies with the following conditions:

• The Foreign Investor or its closely related persons will not become a board member or a statutory auditor of the listed company.

• The Foreign Investor will not propose to the shareholders of the listed company at the general meeting of shareholders a transfer or disposition of the listed company's business in the designated business sectors.

• The Foreign Investor will not access non-public information about the listed company's technology in relation to business activities in the designated business sectors.

Prohibited access of non-public information includes:

• Obtaining confidential technology-related information (not including information about employment terms or remuneration of board members and employees, and financial information) managed by the divisions of the listed company that conduct business activities in the designated business sectors.

• Requesting disclosure of confidential technology-related information (not including cases where the investee company voluntarily provides the information to the Foreign Investor).

• Requesting a change in internal rules or contracts of the listed company on the treatment of confidential technology-related information.

If the following measures are in place in the financial institution, even if the M&A advisory services section of a financial institution obtains confidential technology-related information or requests disclosure of such information, such conduct does not constitute a breach of this condition:

• The M&A advisory services section is not allowed to share confidential technology-related information with the equity market section.

• The M&A advisory services section is not allowed to exercise influence on the investee company taking advantage of stocks of the company held by the equity market section.

If a foreign financial institution is exempted from a prior notification requirement under the Blanket Exemption, a post-investment report is required only when the foreign financial institution reaches or exceeds 10% of the shares or voting rights of the listed company.

Clients of foreign institutional investors may rely on the Blanket Exemption if:

• They contractually delegate to the foreign financial institution (such as an asset management company):
  • the investment authority; and
  • the authority to exercise voting rights and any other rights as a shareholder of the investee company.
• As a result of such delegation, they are not able to exercise the voting rights nor any other rights as a shareholder of the listed company.

(Article 2, Paragraph 7 of the IDI Ordinance.)

In other words, when the Foreign Investor reserves the right to exercise voting rights of the investee company, the Foreign Investor will not be able to rely on the Blanket Exemption.

Regular Exemption
A "Regular Exemption" is available for Foreign Investors who are categorized as general investors and accredited SWFs.

Under the Regular Exemption, a Foreign Investor that invests in 1% or more of the shares or voting rights of a Japanese listed company that engages in a business in the Non-Core Designated Business Sectors can be exempted from the prior notification requirement if it complies with the following exemption conditions:

• The Foreign Investor or its closely related persons will not become a board member or a statutory auditor of the listed company.
• The Foreign Investor will not propose to the shareholders of the listed company at the general meeting of shareholders a transfer or disposition of the listed company's business in the designated business sectors.
• The Foreign Investor will not access non-public information about the listed company's technology in relation to business activities in the designated business sectors.

For more information regarding the prohibited access of non-public information, see Blanket Exemption.

A Foreign Investor that invests in 1% or more but less than 10% of the shares or voting rights of a listed company that engages in a business in the Core Designated Business Sectors can be exempted from the prior notification requirement if it complies with the following exemption conditions in addition to the above conditions:

• In connection with the business activities in the Core Designated Business Sectors, the Foreign Investor will not attend or have a designated person attend the executive board or committees of the listed company that make important decisions in these activities.
• In connection with the business activities in Core Designated Business Sectors, the Foreign Investor will not make, or have a designated person make, proposals in a written form, to the board of directors, the executive committees that make important decisions or those members of the listed company requiring their responses or actions by certain deadlines.

A Foreign Investor that invests in 1% or more of the shares or voting rights of the listed company and is exempted from the prior notification requirement under the Regular Exemption will be required to file a post-investment report within 45 days from the transaction.

The following flow chart published by the MOF illustrates the application of these exemptions for the prior notification requirement for stock purchases:
The following flow chart published by the MOF illustrates the application of the prior notification requirement for stock purchases involving listed companies:

**Exemption Scheme for Prior-notification for Stock Purchases (PN-SP)**

<table>
<thead>
<tr>
<th>Types of investors</th>
<th>Scope</th>
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| Foreign financial institutions                          | <"Blanket exemption">  
  - PN-SP will be exempted with no upper limit for investors that comply with the Exemption Conditions (a,b,c)  
  - Post-investment report – from 1% |
| (*See Page 6)                                            |                                                                      |
| General investors                                        | <"Regular exemption">  
  - PN-SP will be exempted with no upper limit for investors that comply with the Exemption Conditions (a,b,c)  
  - Post-investment report – from 1%  
  - PN-SP will be exempted under 1.0% for investors that also comply with the Exemption Conditions on Core Sectors’ Business Activities (6.6)  
  - Post-investment report – from 1% |
| (including SWFs and public pension funds accredited by the authorities) |                                                                      |
| • Investors with a record of sanction due to violation of the FEFTA  
  • State-owned enterprises (except those who are accredited by the authorities) | No exemption is applicable. |

**Exemption Conditions on Core Sectors’ Business Activities**

a) Investors or their closely-related persons (*See Page 7) will not become board members of the investee company.
b) Investors will not propose to the general shareholders’ meeting transfer or disposition of investee company’s business activities in the designated business sectors.
c) Investors will not access non-public information (*See Page 8) about the investee company’s technology in relation with business activities in the designated business sectors.

d) Regarding business activities in core sectors, investors will not attend the investee companies’ executive board or committees that make important decisions in these activities.
e) Regarding business activities in core sectors, investors will not make proposals, in a written form, to the executive board of the investee companies or board members requiring their responses and/or actions by certain deadlines.

Source: Ministry of Finance website (Rules and Regulations of the Foreign Exchange and Foreign Trade Act (24 April 2020), page 4.)
Valid Period of Clearance for Share Purchase
In case of share purchase transactions as Inward Direct Investment, etc. Involving National Security, following clearance by the authorities of a prior notification, the Foreign Investor can purchase shares up to the notified amount at any time within six months after the submission of the prior notification. Additional prior notifications will not be required for individual transactions up to the notified amount. The Foreign Investor who has filed a prior notification and made Inward Direct Investments etc. Involving National Security based on the clearance is required to also file a post-investment report within 45 days from the transaction.

Prior Notification for Certain Actions
Under the FEFTA, Foreign Investors can take the following actions only after a prior notification for these actions is filed and cleared. Foreign Investors who used the exemption from a prior notification for share purchase can also take these actions only if they file and clear a Prior Notification for Certain Actions:

- Consent (that is, voting affirmatively at the shareholders meeting) for nomination of the Foreign Investor itself or its closely related person as a board member of the investee listed company.

  A Prior Notification for Certain Actions is required each time the Foreign Investor exercises its voting rights, and even if the nomination is made by a third party. If the nominee is neither the Foreign Investor itself nor its closely related persons, a Prior Notification for Certain Actions is not required.

- Consent (that is, voting affirmatively at the shareholders meeting) for a proposal made by the Foreign Investor to transfer or dispose the investee company's business activities in the designated business sectors.

  Where the proposal to transfer or dispose the investee company's business activities is made by other shareholders, Prior Notification for Certain Actions is not required.

If the prior notification for these actions is not of concern from a national security perspective, the authorities will notify the investor of clearance of the screening within five business days.

The following flow chart published by the MOF illustrates the application of the prior notification requirement for certain actions involving listed companies:
Post-Investment Reports
Subject to certain exemptions, the Foreign Investor must make a post-investment report within 45 days from the transaction when the Foreign Investor meets the following criteria:

- The Foreign Investor is in one of the countries or areas designated by Appended Table 1 of the IDI Order.
- The investee company:
  - does not engage in a business in any designated business sector; or
  - engages in a business in a designated business sector, but the Foreign Investor relies on an exemption.
- The Foreign Investor relating to Iran conducts Inward Direct Investments other than those pre-approved by the United Nations Security Council.
- The ownership ratio or the voting right ratio of the Foreign Investor (aggregated with the closely related persons) reached or exceeded 10% of the investee company.

(Article 55-5, Paragraph 1 and Article 55-8 of the FEFTA; Q14 of the FEFTA Q&A (Inward Direct Investments and Specified Acquisition).)

Also, when a Foreign Investor who is subject to a prior notification requirement relies on an exemption, a post-investment report after exemption will be required when the Foreign Investor's shareholding ratio reaches:
• 1% for the first time.
• 3% for the first time.
• 10% or more for each transaction.

Post-investment reports will not be required at the second and subsequent transactions reaching 1% or 3%. If the shareholding drops below 1%/3% by stock sales, and subsequently returns to or beyond 1%/3% by share purchases, post-investment reports will not be required.

**Penalties for Non-Compliance**

If Inward Direct Investments or Specified Acquisitions are subject to a prior notification, but a Foreign Investor does not file a required prior notification or conducts the Inward Direct Investment or Specified Acquisition during the required waiting period or in violation of an order of modification or discontinuance, the Foreign Investor may be punished by either or both:

• Imprisonment for not more than three years.
• A fine of up to three times the value of the transaction at issue (not to exceed JPY1 million).

(Article 70, Paragraph 1, Item 22 through Item 25 of the FEFTA).

If Inward Direct Investments are subject to a post-investment report and a foreign investor does not file a post-investment report, the Foreign Investor is punished by imprisonment of not more than six months or a fine of not more than JPY500,000 (Article 71, Item 6 of the FEFTA).

**Industry Sectors in Japan with Additional Notification or Approvals**

FDIs are cross-sectionally regulated by the FEFTA. In addition, the Broadcast Act, the Radio Act, the Act Concerning Nippon Telegraph and Telephone Corporation (NTT Act), the Aviation Act, and the Consigned Freight Forwarding Business Act impose fixed maximum foreign shareholding ratios and provide additional requirements as below:

<table>
<thead>
<tr>
<th>Industry Sectors</th>
<th>Direct Investment</th>
<th>Indirect Investment</th>
<th>Foreign Executive</th>
<th>Sanction</th>
<th>Monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Broadcast Act</strong></td>
<td>Less than 1/5 of voting rights</td>
<td>Less than 1/5 of voting rights (N/A for satellite broadcasting)</td>
<td>Not specified executive officer</td>
<td>Cancellation of approval</td>
<td>Notification of change of officers and status of voting rights</td>
</tr>
<tr>
<td>(Act No. 132 of 1950, as amended)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Renewal of approval/license</td>
</tr>
<tr>
<td><strong>Radio Act</strong></td>
<td>Less than 1/3 of voting rights (Terrestrial radio and TV, core broadcast station: Less than 1/5)</td>
<td>Less than 1/5 of voting rights (N/A for satellite broadcasting and radio station)</td>
<td>Not representative</td>
<td>Cancellation of license</td>
<td>Notification of change of officers and status of voting rights</td>
</tr>
<tr>
<td>(Act No. 131 of 1950, as amended)</td>
<td></td>
<td></td>
<td>Less than 1/3 of officers (Not specified executive)</td>
<td></td>
<td>Renewal of approval/license</td>
</tr>
</tbody>
</table>
Currently, there are no specific restrictions on the foreign ownership of real estate. However, when a non-resident purchases property in Japan, the purchaser may be required to report the transaction to the MOF through the BOJ within 20 days from the purchase date. For more information on foreign real estate transactions in Japan, see Country Q&A, Investing in Japan, Question 13.

Additionally, the Act on the Review and Regulation of the Use of Lands and Buildings Around Important Facilities and Border Islands was promulgated on 23 June 2021 and became effective on June 1, 2022. This Act will be applied to all owners (not just foreign owners). Under this Act, the government may specify certain areas around facilities and border islands that are important for national security (that is, Self-Defense Force facilities, US military bases, Japan Coast Guard facilities and the designated "Life-Related Facilities") as surveillance areas. Transactions or usage of real property in these areas will be regulated (such as subject to prior notification or subject to suspension order).

**Anti-Money Laundering Laws**

In Japan, the following laws function as anti-money laundering regulations:

- The Act on Punishment of Financing to Offences of Public Intimidation (Act No. 67 of 2002).

Under the Act on Prevention of Transfer of Criminal Proceeds, when a specified business operator (for example, banks, insurance companies, financial instruments business operators or professional service providers) conducts a specified transaction of a specific business, the specified business operator must confirm:

- A client’s identification items (that is, name, address, and date of birth (for natural persons) or name and address of the headquarters (for judicial persons)).
• Purpose of transaction.
• Occupation (for natural persons) or types of business engaged (for judicial persons).

A beneficial owner's identification items should be confirmed in a manner specified in the Enforcement Regulations of the Act on Prevention of Transfer of Criminal Proceeds (Article 4, Paragraph 1 of the Act on Prevention of Transfer of Criminal Proceeds).

If a client is a foreigner who does not have an address in Japan (that is, the period of stay is not more than 90 days), nationality and passport number or address are required to be presented depending on the types of transaction.

To confirm the required information, the specified business operator is required to confirm one of the following items in a specified manner:

<table>
<thead>
<tr>
<th>Client</th>
<th>ID</th>
<th>Method to Confirm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Natural Person</td>
<td>(a) Driver's license, residence care, My Number, passport, or physical disability certificate</td>
<td>Present the original of one of (a)</td>
</tr>
<tr>
<td></td>
<td>(b) Document issued by the authorities which indicates name, address, and the date of birth with photo</td>
<td>Present the original of one of (b) and send documents by non-forwarding mail</td>
</tr>
<tr>
<td></td>
<td>(c) Health insurance card, or seal registration certificate relating to the seal affixed on an application or contract</td>
<td>Present the original of two different documents of (c); or</td>
</tr>
<tr>
<td></td>
<td>(d) Seal registration certificate, certificate of family register, resident card</td>
<td>Present the original of one of (c) and the original of one of (b)(d)(e); or</td>
</tr>
<tr>
<td></td>
<td>(e) Other document issued by the authorities which indicate name, address, and the date of birth</td>
<td>Present the original of one of (c) with supplemental document which indicate the current address; or</td>
</tr>
<tr>
<td>Judicial Person</td>
<td>Corporate registration certificate, seal registration certificate</td>
<td>Present the original</td>
</tr>
<tr>
<td></td>
<td>Document issued by the authorities which indicate name and the address of the headquarters</td>
<td>Present the original</td>
</tr>
<tr>
<td></td>
<td>Send a copy or the information and send documents to the address of the headquarters by non-forwarding mail</td>
<td>Send a copy or the information and send documents to the address</td>
</tr>
</tbody>
</table>
There are additional confirmation methods which use software and the internet for non-face-to-face situations.

A specified business operator must review if:

- Assets acquired by a transaction relating to a specified business are suspected to be the proceeds raised by a crime under Article 2, Paragraph 4 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime or Article 2, Paragraph 5 of the Anti-Drug Special Provisions Act.
- The client is suspected of engaging in criminal conduct set forth in Article 10 of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime or Article 6 of the Anti-Drug Special Provisions Act.

If the specified business operator determines there is a suspicious transaction, the specified business operator must promptly notify the regulators (Article 8, Paragraph 1 of the Act on Prevention of Transfer of Criminal Proceeds).

**Registration and Disclosure of Ownership**

**Registration of Ownership**

Under the Companies Act, a transfer of shares will not be perfected against the stock company and other third parties unless the name and address of the person who acquires those shares is stated or recorded in the shareholder registry (Article 130, Paragraph 1 of the Companies Act). To change the shareholder in the shareholder registry, the shareholder needs to complete the procedures required by the company.

While a person who becomes a shareholder in a company incorporated in Japan is not generally required to register its ownership in the shareholder registry, that person would need to register in the corporate registry to claim and exercise its shareholder rights to the company and against other third parties.

When a shareholder exercises minority shareholder's rights to a listed company, the shareholder needs to request a securities firm to arrange to issue an individual shareholder notice to the listed company and have the Japan Securities Depository Center, Inc. (JASDEC) notify the listed company of the information concerning the number of shares held by the shareholder. Usually, an individual shareholder notice is sent to the listed company after four business days have been passed from the request, but it could take longer. When the individual shareholder notice is issued to the listed company, the securities company notifies that the individual shareholder notice is delivered to the listed company and delivers a notice with the noticed date to the shareholder. The shareholder is required to exercise a minority shareholder's right within four weeks from the noticed date when the individual shareholder notice was delivered.

**Disclosure of Ownership**

All shareholders (not just foreign shareholders) who become a holder of more than 5% of the shares of a company listed on a Japanese exchange are required to file a large shareholding report within five business days from the transaction.

If the shareholder who has submitted a large shareholding report increases or decreases its shareholding ratio of the listed company by 1% or more or there is any change of material items in the large shareholding report (including making a material
propose to the listed company), the shareholder is required to file a fluctuation report within five business days from the transaction or such change.

The shareholder can file a large shareholding report in a street name, but if the shareholder makes a proposal to the listed company, the shareholder needs to register itself in the shareholder registry.

**Practical Implications of Foreign Investment Restrictions on Private M&A Transactions**

**Scope of Foreign Investors**

Even where the buyer of shares in a Japanese company is a Japanese company, if 50% or more of the shares of that Japanese company are directly or indirectly owned by a foreign company, the buyer will be a Foreign Investor that may be subject to a prior notification or a post-investment report (see Foreign Investors).

**Relevant Inward Direct Investments**

**Acquisition of Shares of a Non-Listed Company**

Under the FEFTA, the acquisition of any number of shares in a Japanese non-listed company is included as one of the Inward Direct Investments (see Inward Direct Investments).

If the investee non-listed company (or its subsidiaries) does not conduct any business classified in a designated business sector, the Foreign Investor will not be subject to a prior notification and will be required to file a post-investment report only when the Foreign Investor reaches or exceeds 10% of the shares of the investee non-listed company.

If the investee non-listed company conducts any business classified in a Non-Core Designated Business Sector, the Foreign Investor will be exempted from the prior notification requirement (but will be required to file a post-investment report) if it complies with the following conditions:

- The Foreign Investor or its closely related persons will not become a board member or a statutory auditor of the non-listed company.
- The Foreign Investor will not propose to the shareholders of the non-listed company, at the general meeting of shareholders of such non-listed company, the transfer or disposition of the non-listed company's business in the designated business sectors.
- The Foreign Investor will not access non-public information about the non-listed company's technology in relation with business activities in the designated business sectors.

However, if the Foreign Investor does not satisfy these conditions, the Foreign Investor will be subject to a prior notification and also subject to a post-investment report.

If the investee non-listed company conducts any business classified in a Core Designated Business Sector, the Foreign Investor will be subject to both a prior notification and a post-investment report.
The following flow chart published by the MOF illustrates the application of the prior notification requirement for stock purchases involving unlisted companies:

Transfer of Business
Certain actions conducted by a Foreign Investor are also subject to a prior notification. The transfer of a business from a company located in Japan or succession to a business by a business transfer, absorption-type company split or merger is one of such actions which are subject to a prior notification.

Prior Notification

When a Foreign Investor is required and has made a prior notification in connection with the Inward Direct Investment, the Foreign Investor must not conduct the Inward Direct Investment during the waiting period. The waiting period is, in principle, 30 days from the day on which the MOF and the competent ministries for the business received the prior notification and could be extended up to four months.

Since the Foreign Investor is prohibited from conducting the planned Inward Direct Investment during the waiting period, this prior notification and clearance should be carried out before signing the purchase agreement or should be agreed by the parties as one of the conditions precedent to the closing of the transaction. The parties should include sufficient time in the transaction timeline to go through this procedure.

Local Content Requirements
There are no requirements to employ a certain percentage of local staff or use domestically manufactured goods or domestically supplied services to operate a business in Japan.

**Additional COVID-19 Restrictions on Foreign Investment**

No temporary COVID-19 measures have been introduced in connection with Japan's foreign investment legislation. However, in June 2020, the Japan government additionally designated manufacturing businesses involving pharmaceuticals for specific infectious disease and specifically controlled medical devices as a business in Core Designated Business Sectors subject to the prior notification requirement under the FEFTA. This measure was adopted because of the COVID-19 pandemic situation to maintain domestic manufacturing infrastructure of important medical industries and to properly prevent situations that may cause serious impact on national security, life, and health in Japan.

### Investment Partnerships

#### Party Obliged to File a Prior Notification

With respect to partnerships, the following table illustrates who should file a prior notification in the case of investment partnerships:

<table>
<thead>
<tr>
<th>Investment Ratio of Foreign Investors</th>
<th>General Partner</th>
<th>Foreign Investor</th>
<th>Japanese Investor</th>
</tr>
</thead>
<tbody>
<tr>
<td>50% or more</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less than 50%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Ministry of Finance website ([Rules and Regulations of the Foreign Exchange and Foreign Trade Act (24 April 2020), page 17.](#))