

Mandatory Notification of Foreign Investors

As various challenges are on the rise both in economy and security territories, it is necessary for the government to collectively strengthen its economic security initiatives. While further promoting sound inward investment into Japan, one of the aims of the Foreign Exchange and Foreign Trade Act ("FEFTA") is to prevent technology leakage involving national security. To this end, the FEFTA poses duties on foreign investors and foreign investment that will be reviewed from the perspective of national security.

Outline of the system

Under the FEFTA regime, when (1) foreign investors (2) make an investment in or take relevant actions to Japanese companies operating in (3) Designated Business Sectors, the foreign investors must submit a prior notification via a resident in Japan acting as an agent^(Note).

(Note) An exemption from this duty is provided as long as foreign investors submit a post-investment report and continue to refrain from any actions involving the investee company after the deal including but not limited to (i) appointing themselves or his/her closely-related person as a board member and (ii) accessing non-public technological information of the investee. This exemption scheme, however, does not apply to state-owned enterprises.

Examples of cases when a prior notification is required

- An **individual investor who lives in a foreign country** acquires one or more share of an unlisted **Japanese company** that engages in manufacturing advanced materials or defense equipment which is subject to import restrictions (including dual use items).
- A **foreign investor** gives consent, at a shareholders meeting, to the appointment of his/her closely-related person as a board member of the **Japanese company** that engages in developing software.

Japanese company
operating in Designated
Business Sectors

Foreign investor

Ministry of Finance and the
competent ministries with
each business sector



(1) Foreign Investor Categories

- ① Non-resident individuals
- ② Corporations and organizations incorporated under foreign laws and regulations
- ③ Japanese companies in which the majority of voting rights are held by ① or ②
- ④ Partnerships in which the majority of capital investments are made by ① or ②
- ⑤ Partnerships in which the majority of partners executing business are ① or ②

(2) Investment and relevant actions

- Acquiring 1% or more of stocks of a listed company
- Acquiring one or more stocks of an unlisted company (no threshold)
- Giving consent to the appointment of a foreign investor or his/her closely-related person as a board member or corporate auditor of the investee company
- Proposing or giving consent to the transfer or disposition of the investee company's business

(3) Examples of the Designated Business Sectors

- Manufacturing
 - Items related to weapons, aircraft (including drones), space development, nuclear facilities, and repairing and software ancillary thereto
 - Dual use technologies
 - Pharmaceuticals of communicable diseases and specially-controlled medical devices
 - Permanent magnets and their materials
 - Machine tools and industrial robots
 - Semiconductors and semiconductor manufacturing equipment
 - Storage batteries and their materials
 - Marine equipment (e.g., engines)
 - Metal 3D printer manufacturing, metallic powder
- Metal mining, smelting and refining of important mineral resources
- Construction for improving and maintaining port facilities on designated remote islands
- Fertilizer (e.g., potassium chloride) imports
- Cybersecurity (e.g., manufacturing of information processing devices, parts, and software, and information services)
- Infrastructure (e.g., electricity, gas, telecommunications, water supplies, railways, petroleum, heat supplies, broadcasting, public transport buses)
- Security services, agriculture, forestry and fisheries, leather product manufacturing, aviation transportation, maritime transportation

Procedure of prior notification and review

In principle, foreign investors are required to submit a prior notification within six months prior to the day when they intend to make an investment or take relevant actions (notification can be made online).

The Finance Minister and the competent ministers for each business sector review the prior notification from the perspective of national security, and if they acknowledge any risk of undermining national security, they may recommend or order modification or discontinuation of the investment.

If foreign investors fail to submit a prior notification or make a false notification, the ministers may order them to take necessary measures, such as disposal of the shares they have acquired.

FAQ

Q In addition to the acquisition of shares, when is it necessary to submit a prior notification?

A A foreign investor succeeds to a business that is categorized as the Designated Business Sectors.

Q When is the foreign investor who is required to a prior notification allowed to make investment or take relevant actions?

A In order to enable the Finance Minister and the competent ministers for each business sector to review whether the investment or relevant actions are unlikely to undermine national security, the foreign investor cannot make the investment or take similar actions within 30 days after the ministers receiving the prior notification. This period is called “investment prohibition period” and could be extended to four months. However, this period may be shortened, if the investment or relevant actions would not undermine national security.

Q Is it possible to use the prior notification exemption scheme when acquiring shares in an unlisted company?

A The prior notification exemption scheme is provided as long as foreign investors submit a post-investment report and continue to refrain from any actions involving the investee company after the deal including but not limited to (i) appointing themselves or his/her closely-related person as a board member and (ii) accessing non-public technological information of the investee. This exemption scheme, however, does not apply to state-owned enterprises.

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