

Frequently Asked Questions on the Amendment Bill
of the Foreign Exchange and Foreign Trade Act

Q1. Will there be any addition to the business sectors in which foreign investors need to submit a prior-notification (“designated sectors”)?

A. The authorities have been reviewing the coverage of designated sectors as necessary. But no addition of sectors is planned in relation with the Amendment Bill of the Foreign Exchange and Foreign Trade Act.

Q2. Foreign direct investment to listed companies in non-designated sectors is subject to post-investment report requirement. Will the threshold for this requirement (currently 10%) be revised?

A. No. The threshold remains at 10%.

Q3. How can foreign investors know which of the following categories a listed company falls within?

- 1) Companies subject to post-investment report only
- 2) Companies for which prior-notification is required but exemption is applicable
- 3) Companies for which prior-notification is required and exemption is not applicable

A. To help foreign investors know with confidence whether prior-notification is required or not, the authorities will publish and update a list of listed companies for each of these categories.

Q4. State-owned enterprises are not eligible for the exemption from prior-notification. Does this mean that SWFs (sovereign wealth funds) and pension funds cannot benefit from the exemption and always have to submit prior-notification?

A. If SWFs and pension funds are deemed to pose no risk to national security, they are eligible for exemption from prior-notification.

If SWFs and pension funds invest in listed companies through financial institutions eligible for exemption and do not become shareholders of the listed companies, those SWFs and pension funds do not need to submit prior-notification.

Q5. What conditions do foreign investors need to comply with if they are to take advantage of exemption from prior-notification?

A. The objective of the Amendment Bill is to prevent, for national security reasons, leakage of information on critical technologies as well as disposition of business activities. The conditions with which foreign investors need to comply to benefit from exemption are limited to those truly necessary for the aforementioned objective, namely:

- 1) The foreign investors or their closely-related persons will not become board members of the invested company;
- 2) The foreign investors will not propose transfer or disposition of important business activities of the invested company to the general shareholders' meeting; and
- 3) The foreign investors will not access non-public information about the invested company's technology that can impact national security.

Q6. How do you respond to concerns that the conditions in Q5 excessively limit the right of shareholders or undermine the trend toward strengthening corporate governance?

A. As far as shareholders' right is concerned, the only thing that foreign investors need to do to take advantage of exemption is to express in their post-investment report their intention to comply with Q5 1) and 2), namely:

- 1) The foreign investors or their closely-related persons will not become board members of the invested company; and
- 2) The foreign investors will not propose transfer or disposition of important business activities of the invested company to the general shareholders' meeting.

There are no procedures to be taken by foreign investors before investment.

In light of the importance of corporate governance, no other restrictions than 1) and 2) will be imposed to shareholders' right or engagement with invested companies. In addition, foreign investors can exercise actions mentioned in 1) and 2) if they submit prior-notification on these actions.

Q7. Is the Amendment Bill targeting so-called activists?

A. No, it isn't. The Amendment Bill aims to further promote sound foreign direct investment while preventing leakage of information on critical technologies and disposition of business activities for national security reasons.

The conditions on shareholders' right with which foreign investors need to comply to benefit from exemption are limited to those truly necessary for the aforementioned objective, namely:

- 1) The foreign investors or their closely-related persons will not become board members of the invested company; and
- 2) The foreign investors will not propose transfer or disposition of important business activities of the invested company to the general shareholders' meeting.

Needless to say, execution of shareholders' right and their engagement with invested companies which are conducive to increasing corporate value is welcome from the viewpoint of corporate governance. Therefore, the Amendment Bill does not impose any restrictions to shareholders' right or engagement with companies that do not relate with the objective of the Amendment Bill.

Q8. Foreign investors holding equal to or more than 1% of the total shares of a listed company are required to submit prior-notification when they want to take actions under 1) or 2) of Q5 and thereby deviate from their initial expression in the post-investment report of no intention to do so. How do you respond to concerns that such requirement undermines the trend toward enhancing corporate governance?

A. The screening for these actions will be conducted only from the viewpoint of preventing leakage of information about critical technologies as well as disposition of business activities for national security reasons. The Amendment Bill does not impose any restrictions to shareholders' right or engagement with invested companies that do not relate with the aforementioned objective.

The authorities will conduct screening in a way that is in full respect of corporate governance.

- In order to ensure transparency and accountability of the screening process, factors to be considered in screening will be put together and published.
- If the proposed actions by foreign investors are not deemed to be of concern from national security perspectives, the authorities will notify the investor of clearance of the screening within five business days.

Q9. Compared to other major countries, does the Amendment Bill address national security concerns in a sufficient manner? Is the threshold of 1% appropriate?

A. The FDI screening regime significantly varies country by country, even within G7 countries. It is important to look at both pre-investment screening and post-investment intervention.

As far as pre-investment screening is concerned, the threshold for prior screening of 1% under the Amendment Bill will be the second lowest among G7 countries after the US. At the same time, the Amendment Bill will introduce a broad exemption framework to promote sound investment to Japan.

With respect to post-investment intervention, the US, the UK, Germany and Canada have a framework whose scope covers all business sectors. The Amendment Bill will expand the scope of Japanese post-investment intervention framework to all designated sectors subject to prior-notification, which is equivalent to France and Italy.

Overall, the Amendment Bill will allow Japan's FDI regime to be better-balanced, compared with other G7 countries.

Q10. When will the Amendment Bill take effect?

A. The Amendment Bill will take effect on the day within 6 months from the day of promulgation, to be provided for by the Cabinet Order.