

FDI Guide

Japan

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Foreword: The Foreign Exchange and Foreign Trade Act of Japan (FEFTA) regulates foreign direct investment (FDI) in Japanese companies. The FEFTA obligates foreign investors, whether individuals or entities, to either file a prior notification and obtain prior Japanese Government approval or to submit a post facto report to the relevant ministers, depending on which sectors the Japanese target companies operate their businesses. The FEFTA was amended and is applicable to FDI conducted on or after June 2020. This amendment to the FEFTA has broadened its applicability to a wider scope of acquisitions and other activities. Thus, it is critically important for foreign investors planning FDI to understand the Japanese FDI rules in order to be able to analyse whether a proposed acquisition will trigger a filing obligation, and if so, of what type and to which authorities. In addition, the relevant ministers may impose certain restrictions on a foreign investor. The Japanese FDI rules are quite complicated, and this guide is intended to be informational only. It is not comprehensive and does not constitute professional advice. In situations in which legal advice is sought, you should seek legal advice tailored to the facts of your case. The views expressed herein are those of the authors only and do not necessarily represent the views of other partners or attorneys associated or affiliated with TMI Associates or the firm as a whole.

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1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <p>Article 1 of the FEFTA states that its purpose is freedom of foreign transactions, such as foreign exchange and foreign trade.</p> <p>In principle, an FDI transaction requires a post facto report only. Nevertheless, under Article 27, paragraph 1 of the FEFTA, foreign investors intending to effect certain types of FDI in Japanese target companies operating in certain sensitive sectors are required to file a prior notification for screening by the authority (as defined in item 2 below). This regime promotes national security, public order, public safety and the smooth operation of the Japanese economy.</p>
2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>Japanese FDI prior notification rules are mainly set forth in Article 27 of the FEFTA.</p> <p>Each Japanese FDI notification must be sent to the Bank of Japan (BOJ) by mail or electronically. Then, the BOJ forwards the prior notification to the Ministry of Finance (MOF), as well as any other relevant ministry that oversees the sector in which the target company operates its business (the BOJ, MOF and other ministry or ministries, collectively, the ‘Authority’). The Authority then reviews the planned FDI and concludes whether or not the planned FDI will be permitted. The Authority may include the National Police Agency; Financial Services Agency; Ministry of Internal Affairs and Communications; MOF;</p>

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			<p>Ministry of Health, Labour and Welfare; Ministry of Agriculture, Forestry and Fisheries; Ministry of Economy, Trade and Industry (METI); and Ministry of Land, Infrastructure and Transport, and Tourism.</p> <p>METI in particular oversees many sectors.</p>
3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>Prior notification</p> <p>Generally, the foreign investor must file a prior notification for screening by the Authority if: (1) the Japanese target company operates its business in a Designated Business Sector (see item 4 below); and (2) the planned FDI falls within one of the specified categories, including any of the following:</p> <ul style="list-style-type: none"> (i) acquisition of the shares or voting rights of a Japanese company that is listed on a Japanese stock exchange if the investment ratio or voting right ratio amounts to <i>one per cent or more</i> following the acquisition; (ii) acquisition of any share or equity of a Japanese non-listed company (no threshold applies); (iii) loan with maturity of more than one year to a Japanese target company; (iv) acquisition of corporate bonds issued by a Japanese company with maturity of more than one year; (v) succession of a business within a Designated Business Sector from a Japanese target company through the acquisition of a business, an absorption-type company split, or a merger; (vi) (a) establishment of a branch office or factory in Japan; or (b) a change of its type or business purpose; and (vii) consent to any of the following actions at a shareholders meeting of a Japanese company: (a) a change of the business purpose of such company if a foreign investor owns one-third or more of the voting rights of the company; (b) <i>the appointment of a director or a statutory auditor thereof (see note below)</i> if the target company is a listed company and a foreign investor owns one per cent or more of the voting rights of the company (if the target company is a non-listed company, no threshold applies); or (c) the transfer of the entire business thereof and so on if the target company is a listed company and a foreign investor owns one per cent or more of the voting rights of the company (if the target company is a non-listed company, no threshold applies).

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			<p>In addition, a foreign investor who has obtained approval from the Authority must report to the Authority within 45 days after the occurrence of any of the following:</p> <ol style="list-style-type: none"> 1. the foreign investor has acquired or disposed of shares or voting rights of the target company; 2. the foreign investor has provided a loan to or received repayment thereof from the target company; 3. the foreign investor has acquired corporate bonds issued by or has received redemption payments thereof from the target company; 4. the foreign investor has ceased to establish, or abolished, the branch office or factory in Japan; or 5. the foreign investor has succeeded to or disposed of the business of the target company. <p>Note</p> <p>The foreign investor may need to obtain prior approval of the Authority if it exercises its voting right for the appointment of a director or statutory auditor of a Japanese target company, and if those candidates are persons related to the foreign investor. Related persons include employees or executives of the foreign investor, its subsidiaries and its parent company, among others. Importantly, related persons also include employees or executives of parties with which the foreign investor has agreed to jointly exercise its voting rights and other rights. To this end, if a foreign investor has entered into a shareholder or similar agreement with another shareholder, pursuant to which the foreign investor and other shareholder must jointly exercise their voting rights for the appointment of a director or a statutory auditor, the other shareholder or its employee or executive may fall into the related person category, and accordingly, the foreign investor may need to obtain prior approval from the Authority if it intends to exercise its voting right for the appointment of the related person as a director or statutory auditor of the Japanese target company.</p> <p>Exemptions</p> <p>If an exemption owing to the presence of certain conditions applies, the foreign investor may acquire the shares or voting rights of a Japanese listed company without prior notification even if the Japanese listed company conducts business in a Designated Business Sector.</p> <ul style="list-style-type: none"> • Even if the Japanese target company operates its business in a Core Business Sector (see item 4, below), a foreign financial institution may acquire one per cent or more of the shares or voting rights of a Japanese listed company without any

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			<p>upper limit or any prior notification on the condition that: (1) a related person of such an institution is not appointed as a director or statutory auditor of the target company; (2) it does not offer an agenda at a shareholders' meeting proposing the transfer or abolition of the target company's business within a Designated Business Sector; and (3) it does not access the target company's confidential, technology-related information in connection with its business within a Designated Business Sector.</p> <p>If these conditions are met, the foreign financial institution must submit a post facto report for its acquisition of shares or voting rights to the Authority if the investment ratio or voting right ratio amounts to ten per cent or more following the acquisition.</p> <ul style="list-style-type: none"> • General foreign investors may also acquire shares or voting rights of both a Japanese listed company and a privately held Japanese company that operate their businesses within a Designated Business Sector (other than any Core Business Sector), without the prior notification on the same conditions mentioned above. However, if a Japanese, non-listed target company operates its business in a Core Business Sector, this exemption does not apply. If a listed target company operates its business in a Core Business Sector, a general foreign investor may acquire a listed company's shares or voting rights (unless the investment ratio or voting rights ratio amounts to ten per cent or more following the acquisition), as long as it also complies with the following additional conditions: (4) it does not attend the meetings of the listed company's committees that have authority to make important decisions regarding the company's activities in a Core Business Sector; and (5) it does not submit a written request to the listed company's committees that have authority to make important decisions, which includes a response or action deadline, in connection with its activities in a Core Business Sector. In principle, an exemption is unavailable for any state-owned company, although a sovereign wealth fund or public pension fund can utilise this exemption if it has obtained a licence from the MOF and has entered into a memorandum of understanding with the MOF. <p>However, a foreign investor who uses this exemption must submit a post facto report for its acquisition of shares or voting rights in a Japanese listed target company to the Authority: (i) the first time the investment ratio or voting rights ratio crosses the one per cent threshold; (ii) the first time the investment ratio or voting rights ratio crosses the three per cent threshold; or (iii) each time the investment ratio or voting rights ratio crosses the ten per cent threshold. A foreign investor who uses this exemption must submit a post facto report to the Authority for its acquisition of any share or equity interest in a Japanese non-listed target company (even if it acquires only one share or equity interest).</p>

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			<ul style="list-style-type: none"> • No exemption is available for any state-owned company (excluding certain sovereign wealth funds or public pension funds as mentioned above) or a foreign investor who has been found to have violated the FEFTA and has been punished as a result. <p>Post facto report</p> <p>If the target company does not operate its business in any of the Designated Business Sectors, the foreign investor is not required to file a prior notification, though it is required to report its FDI after the completion of the investment. Examples of FDI requiring a post facto report include:</p> <ol style="list-style-type: none"> 1. acquisition of shares or voting rights of a Japanese listed company, if the investment ratio or voting rights ratio amounts to ten per cent or more following the acquisition; 2. acquisition of shares or equity interest of a Japanese non-listed company, if the investment ratio or voting rights ratio amounts to ten per cent or more following the acquisition; 3. loan with a maturity of one year or more to a Japanese target company; 4. acquisition of corporate bonds issued by a Japanese company with maturity of more than one year; and 5. acquisition or succession of business from a Japanese target company. <p>The stated intention of this post facto reporting regime is to monitor and collect information regarding transactions with foreign investors.</p> <p>Notwithstanding the foregoing, FDI transactions by foreign investors of certain specified nationalities or relating to Iran also require prior notification.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>In principle, acquisitions by a foreign investor of a non-Japanese parent company (which owns a Japanese subsidiary) are not considered FDI, provided, however, that some of these transactions are covered by other regulations (eg, a capital transaction or outward direct investment) if they are conducted between a resident of Japan and non-resident of Japan.</p> <p>The fact that FDI is consummated among or between companies under common control does not exempt the parties from FDI notification rules. There is no specific exemption for group companies.</p>

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			Nonetheless, if a foreign investor has obtained approval for its acquisition of 50 per cent or more shares of a Japanese target company, then it does not need to file a further prior notification in order to vote on the appointment of a director or statutory auditor of the target company (see item 3.1(vii)(b)).												
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	<p>After the receipt of prior notification, the MOF and other relevant ministries analyse whether FDI should be allowed. Approval is granted if they conclude that there are no concerns from the standpoint of the target company's business purpose. During the period when screening is pending (ie, the waiting period), the foreign investor may not consummate the FDI.</p> <p>The Authority is entitled to request additional details from the parties to the proposed FDI (or their related persons) about the FDI to the extent necessary to achieve the purposes of the FEFTA. Furthermore, the Authority can conduct on-site inspections at the office, factories or any facilities of such parties or persons.</p>												
4.	Sectors falling under the FDI scope	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>Prior notification for the approval of the Authority is required if a foreign investor is seeking to make an FDI that would undermine Japan's national security, disturb the maintenance of public order or interfere with the protection of public safety, or that would have a significant adverse effect on the Japanese economy. To this end, the business scope of the target company is specified by the Japanese Government, as follows:</p> <table border="1" data-bbox="1122 911 1995 1425"> <thead> <tr> <th data-bbox="1122 911 1480 975">Designated business sector</th> <th data-bbox="1480 911 1995 975">Core business sector</th> </tr> </thead> <tbody> <tr> <td data-bbox="1122 975 1480 1038">Weapons</td> <td data-bbox="1480 975 1995 1038">All</td> </tr> <tr> <td data-bbox="1122 1038 1480 1102">Aviation</td> <td data-bbox="1480 1038 1995 1102">All</td> </tr> <tr> <td data-bbox="1122 1102 1480 1166">Satellites and spacecraft</td> <td data-bbox="1480 1102 1995 1166">All</td> </tr> <tr> <td data-bbox="1122 1166 1480 1257">Nuclear energy-related business</td> <td data-bbox="1480 1166 1995 1257">All</td> </tr> <tr> <td data-bbox="1122 1257 1480 1425">IT (including internet support, information processing and software)</td> <td data-bbox="1480 1257 1995 1425"> <ul style="list-style-type: none"> • Cybersecurity • Business relating to certain personal information of one million or more individuals </td> </tr> </tbody> </table>	Designated business sector	Core business sector	Weapons	All	Aviation	All	Satellites and spacecraft	All	Nuclear energy-related business	All	IT (including internet support, information processing and software)	<ul style="list-style-type: none"> • Cybersecurity • Business relating to certain personal information of one million or more individuals
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Weapons	All														
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			<table border="1" data-bbox="1122 225 1995 715"> <tr> <td data-bbox="1122 225 1480 344">Medicines for infectious diseases and high-level management medical devices</td> <td data-bbox="1480 225 1995 344">All</td> </tr> <tr> <td data-bbox="1122 344 1480 499">Metal mining and component analysis services of critical minerals, including rare earth elements</td> <td data-bbox="1480 344 1995 499">All</td> </tr> <tr> <td data-bbox="1122 499 1480 592">Agriculture, forestry and fisheries</td> <td data-bbox="1480 499 1995 592">None</td> </tr> <tr> <td data-bbox="1122 592 1480 651">Guard services</td> <td data-bbox="1480 592 1995 651">None</td> </tr> <tr> <td data-bbox="1122 651 1480 715">Leather</td> <td data-bbox="1480 651 1995 715">None</td> </tr> </table> <p data-bbox="1066 767 2024 855">Note: The table above is only an abbreviated summary, and both the Designated Business Sectors and Core Business Sectors include many other businesses, such as railway, water supply, electricity, telecoms and oil businesses.</p> <p data-bbox="1066 876 2024 963">As mentioned above, a part or all of a Designated Business Sector is further designated as having one or more Core Business Sectors, and therefore these undergo careful review by the Authority.</p> <p data-bbox="1066 984 2051 1102">There is no threshold, that is, revenue amount generated by the business, with respect to these sectors. Thus, even if the volume of a business within a covered sector engaged in by a Japanese target company is quite small, FDI in that company is subject to the FDI prior notification rules.</p>	Medicines for infectious diseases and high-level management medical devices	All	Metal mining and component analysis services of critical minerals, including rare earth elements	All	Agriculture, forestry and fisheries	None	Guard services	None	Leather	None
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5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p data-bbox="1066 1150 1509 1177">There are five types of ‘foreign investor’:</p> <ol data-bbox="1117 1198 2040 1410" style="list-style-type: none"> <li data-bbox="1117 1198 1509 1225">1. individuals living outside Japan; <li data-bbox="1117 1246 2024 1305">2. entities incorporated under the law of, or having their principal office in, foreign countries; <li data-bbox="1117 1326 2040 1410">3. any corporation incorporated under the Companies Act of Japan of which 50 per cent or more of the voting rights are directly or indirectly owned by individuals or entities described in 1 and 2 above; 										

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			<p>4. investment limited partnership (LPS) of which 50 per cent or more of the capital is provided by, or half or more of the general partners of which are, non-residents of Japan and so on; and</p> <p>5. Japanese entities of which the majority of executives or representative directors are individuals who are non-residents of Japan.</p>
6.	Procedure		In principle, FDI transactions require a post facto report. However, when there is proposed FDI by a foreign investor with respect to a Japanese target company operating in a Designated Business Sector, prior notification and the approval of the relevant minister are required prior to the completion of such a transaction/activity (see item 3.1, above).
	6.1 Before or post-closing filing		
	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p><i>It is mandatory</i> to file a prior notification and obtain approval before the completion of the FDI if a Japanese target company of the proposed FDI operates in a Designated Business Sector.</p> <p>As mentioned in item 4 above, the scope of business subject to the FDI rules is limited, although, there are cases in which it is quite difficult to analyse whether the business of the target company falls within a Designated Business Sector. In these cases, it is recommended that the foreign investor is conservative and seeks approval in order to ensure the completion of the envisaged transaction. In practice, even if it is unclear whether the business of a target company falls within a Designated Business Sector, it is possible to file a prior notification.</p>
	6.3 In the case of post-closing, what are the powers of the authority?		In some cases, FDI must be reported only after closing (see item 3.2, above).
	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>The FEFTA does not provide any formal pre-ruling process, although, in practice, any person can consult with the Authority on questions such as whether a business falls within a Designated Business Sector or whether an envisaged transaction falls within the FDI rules.</p> <p>METI reviewed approximately 95 per cent of the prior notifications submitted for approval in 2020.¹ In practice, METI responds to prior consultations regarding FDI relating to the Designated Business Sector that METI oversees, and it reviews the FDI at issue as if prior notification was submitted. Because this is not a formal process, there is no statutory</p>

¹ Oki Osawa, *Management of Investment by METI in accordance with FEFTA and Practical Issues*, 2294 *Junkan Shoji Homu* 21, 22 (2022) (describing the review of FDI by METI).

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			<p>response timeframe, and the prior consultation process may take a couple of months, depending on the case.</p> <p>After the completion of such a consultation, the foreign investor must file a formal prior notification as well, although, in most cases METI issues its approval within a short period of time (eg, within five to seven business days) from the receipt of prior notification if the prior consultation is complete and no Authority other than METI oversees that business sector.²</p>
	<p>6.5 Timing of various steps</p> <p>(i) Filing</p>	<p>How much lead time is required?</p>	<p>Timeframe provided under the FEFTA</p> <p>Under the FEFTA, the foreign investor may not effect the proposed FDI during the period of 30 calendar days from the date of receipt of the filing by BOJ. During this waiting period, the Authority reviews the prior notification. However, the Authority can shorten the waiting period or extend the waiting period up to five months.</p> <p>In addition, the foreign investor cannot file a prior notification for a transaction that is planned to take place more than six months after the filing date.</p> <p>There is no requirement to enter into a definitive agreement or publicly announce a planned FDI before filing a prior notification.</p> <p>In practice</p> <p>In most cases, the Authority issues approval within 30 calendar days. Also, if the Authority is able to conclude that there is no concern from the perspective of Japan’s national security, it endeavours to issue approval within five business days. We have seen many cases in which the waiting period is shortened to two weeks or less.</p>
	<p>(ii) Review by the authority</p>	<p>Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i>.</p>	<p>Standard period</p> <p>As mentioned above, the Authority has 30 calendar days from the date of receipt of a prior notification to review it. In most cases, the Authority issues its approval within this period.</p> <p>Extension of the waiting period (up to four months)</p> <p>The Authority can extend the waiting period up to four months if it considers that further examination is necessary due to the possibility that the proposed FDI may undermine Japan’s national security, disturb the maintenance of public order or interfere with the</p>

² Oki Osawa, *Management of Investment by METI in accordance with FEFTA and Practical Issues*, 2294 *Junkan Shoji Homu* 21, 23 (2022) (describing the pre-consultation with METI).

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			<p>protection of public safety, or otherwise have a significant adverse effect on the Japanese economy ('FDI Relating to National Security').</p> <p>Alternatively, the Authority can also shorten the waiting period if it concludes that the envisaged FDI will not undermine national security and so on.</p> <p>Extension of the waiting period (up to five months)</p> <p>If, during the extended waiting period referenced above, the Authority concludes that the proposed transaction is FDI Relating to National Security, it issues a recommendation to the notifier to either modify the terms of or not to pursue the proposed FDI. Such a recommendation is issued after the Authority has received opinions from the Council on Customs, Tariff, Foreign Exchange and Other Transactions. If the council informs the Authority that it would be difficult for the council to provide its opinions within the four-month period described above, the waiting period can be extended by an additional month, for a total of up to five months following the receipt of prior notification. If the notifier does not follow the Authority's recommendation to change the FDI's terms or not pursue the FDI, then the Authority can issue an order to such effect.</p> <p>In practice</p> <p>As mentioned above, in most cases, the Authority issues approval within 30 calendar days.</p> <p>However, in some cases, the Authority requests additional information (see below), but is not able to conclude within this initial period that the FDI does not undermine Japan's national security because the information requested is not provided to the Authority's satisfaction. As a result, in such cases, the Authority usually recommends that the notifier withdraws and resubmits the prior notification instead of extending the waiting period. In such a case, the waiting period begins again from the receipt of the resubmitted prior notification, even though the substantive review process itself continues from the previous prior notification.</p>
	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>The Authority contacts the notifier by email or phone and requests further information, such as its capital structure, corporate organisation, rationale and background for the proposed FDI transaction, investment policy, method of management participation, access to the target company's sensitive information and other matters.</p> <p>It is recommended that FDI investors urgently respond to these inquiries in order to facilitate the review process. If it takes a long time to collect the required information, the waiting period will remain long, and it may be recommended that the investors withdraw the prior notification and resubmit it when the information has been collected.</p>

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			<p>In some cases, the Authority requests that the notifier acknowledges and agrees to comply with certain commitments or obligations as to the method of management participation (see item 7, below). Typically, the Authority gives the notifier an opportunity to discuss the content and drafting of the commitments.</p>
		<p>Are there any guidelines issued by the authority?</p>	<p>The BOJ has issued a questions and answers (Q&A) document regarding the FDI regime (last amended in October 2021).</p> <p>On 8 May 2020, MOF issued a press release titled ‘Factors to be considered in authorities’ screening of foreign direct investment’.</p>
	(iv) Filing fees	<p>Is there a filing fee?</p>	<p>No.</p>
	(v) Information needed for filing	<p>What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?</p>	<p>The required information depends on the type of FDI. For example, in the case of the acquisition of shares of a Japanese target company, the following must be provided in the prior notification.</p> <p>Information regarding the notifier:</p> <ol style="list-style-type: none"> 1. Name; 2. name of the representative; 3. location of the head office; 4. country of incorporation (nationality); 5. business; 6. URL address link of the notifier’s website, if any; 7. type of foreign investor (see item 5 above); 8. contact information of person in charge regarding the prior notification; and 9. person or entity that controls the business policy and so on of the notifier, such as an ultimate parent company, if any. <p>Information regarding the target company:</p> <ol style="list-style-type: none"> 1. Name; 2. location of the headquarters; 3. business purpose provided in the articles of incorporation; 4. stated capital and number of voting rights before and after FDI;

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			<p>5. shareholding ratio of foreign investors; and</p> <p>6. Designated Business Sector (Core Business Sector, if any) of the Japanese target company and its Japanese subsidiaries.</p> <p>Note</p> <p>The Designated Business Sector and Core Business Sector, if any, of the Japanese subsidiary of the Japanese target company must be provided; thus, the foreign investor must confirm whether the Japanese target company and its Japanese subsidiaries operate their businesses in the Designated Business Sector and Core Business Sector, if any.</p> <p>Information regarding the transaction</p> <ol style="list-style-type: none"> 1. Whether the target company is listed; 2. type of acquisition (subscription for new shares, purchase of issued and outstanding shares, etc); 3. number of shares and voting rights to be acquired; 4. shareholding ratio of the notifier after the FDI; 5. aggregate amount of consideration to be paid; 6. shareholding ratio and voting rights ratio in the target company held by the notifier before <i>and</i> after the transaction; 7. timing of the transaction; 8. management plan of the target company; 9. whether the notifier is considering proposing the transfer, abolition or downsizing of the business in the Designated Business Sector; and 10. whether the notifier intends to become involved in the management of the target company.
	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	Under the FEFTA, the notifier cannot effect the proposed transaction during the waiting period and has to wait until the waiting period expires before executing the FDI. However, as mentioned earlier, if the Authority does not conclude whether the FDI relates to Japan's national security, the Authority usually requests that the notifier withdraw its prior notification and submit a new prior notification. Thus, in practice, the notifier cannot obtain approval until the Authority concludes that the FDI does not harm Japan's national security and does not cause any of the other negative effects referenced earlier.

	Topic	Explanation/Description of what is expected	Japan
			<p>There is no explicit rule that the planned investment is deemed rejected or approved if the Authority does not issue a decision within the set timeframe. If the Authority completes the review and the FDI is approved, the result of the review is publicly announced on the BOJ website (ie, the date when the transaction can be effected and the case number). In practice, announcements are made each business day.</p>
7.	<p>Conditionality of approval</p> <p>(i) Type of conditions or commitments</p>	<p>Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.</p>	<p>If the Authority takes the position that an FDI may relate to national security and so on, it may request that the notifier makes commitments to mitigate the risk that the consummation of the transaction will undermine Japan’s national security and so on. Such treatment is taken in practice and not explicitly provided under the FEFTA.</p> <p>To date, these types of cases have not been common, so there are no specific model commitments. However, there have been cases in which a notifier has been requested to covenant that:</p> <ol style="list-style-type: none"> 1. a foreign government shall not affect the exercise of voting rights and the target company’s management; 2. the foreign investor shall not propose that the target company transfer or cease a business important from the perspective of Japan’s national security and so on; 3. the target company shall take proper action to avoid any unauthorised dissemination or disclosure of technical information; 4. the notifier does not have and shall not seek access to important information that implicates Japan’s national security and so on; 5. the notifier shall not give the target company any instruction or recommendation regarding the exportation of goods or services that requires the Authority’s approval; and/or 6. the notifier shall cooperate with the Authority if the Authority requests information regarding compliance with the commitments. <p>If the notifier agrees to a commitment as requested by the Authority, such a commitment needs to be set forth as a method of management participation in the prior notification, and the Authority may issue its approval.</p> <p>Under the FEFTA, if the Authority concludes that the FDI may be FDI Relating to National Security, it may also recommend to the notifier that the terms of the proposed transaction be changed or that the transaction not be pursued. If the notifier does not accept such a recommendation, then the Authority can issue an order to change or stop the FDI.</p>

	Topic	Explanation/Description of what is expected	Japan
	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	<p>The Designated Business Sector has been classified based on the Japan Standard Industrial Classification issued by the Ministry of Internal Affairs and Communications (the MIAC). The MIAC has issued a guideline providing examples and precise explanations of each business classification. This guideline is sometimes used and referred to by the Authority as well as the notifier when considering whether the business of a target company falls within the Designated Business Sector.</p> <p>That said, the MIAC guideline is not a part of the public notice of any classification and therefore, is not conclusive.</p> <p>Each Authority has its own discretion regarding the interpretation of each Designated Business Sector it oversees. There are no clear-cut standards to determine whether an FDI in the target company falls within FDI Relating to National Security or whether business not clearly provided in the MIAC's guideline falls within a Designated Business Sector. In this regard, the Authority has wide discretion.</p>
	(iii) Risk of veto	Describe a topical case. Statistics	<p>As mentioned above, if the notifier does not accept the recommendation of the Authority to modify the terms of the transaction or cease pursuit of the transaction, the Authority can issue an order to stop consummation of the transaction. To date, this has been extremely rare, although there has been one relevant case:</p> <p>In 2008, the Children's Investment Master Fund (TCI) filed a prior notification for the acquisition of shares of Electric Power Development Co Ltd ('J-Power'). The MOF and METI concluded that the proposed acquisition may affect the management of J-Power, the government's policy regarding stable electricity supply, and the cycle of nuclear power or nuclear fuel, and also that it may disturb the maintenance of public order. As a result, the ministers suggested that TCI not pursue the acquisition. TCI did not accept this recommendation. Consequently, the ministers issued an order to stop the acquisition.</p> <p>There are no statistics publicly announced by the Authority regarding the number of informal suggestions made by the Authority to withdraw prior notifications.</p>
8.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	As mentioned in item 2, the MOF and minister(s) overseeing the sector in which the target company operates its business review the prior notification by a foreign investor seeking to invest in the target. If the target company operates within multiple business sectors, multiple ministers may be in positions to review the FDI.

	Topic	Explanation/Description of what is expected	Japan
9.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	<p>If a foreign investor goes ahead and consummates the FDI that otherwise would require requisite prior approval, it has committed a criminal offence. The offending investor will be subject to: (1) imprisonment for up to three years; and/or (2) a fine up to the higher of JPY 1m or three times the value of the object relating to the violation. In practice, when violations have occurred, the Authority will demand that the investor submits a report of the background of such a failure to the MOF.</p> <p>Furthermore, the Authority can issue an administrative order to the foreign investor requiring it to dispose of the shares it acquired or to take other proper remedial action: (1) after taking into consideration the opinions of the Council on Customs, Tariff, Foreign Exchange and Other Transactions; (3) if the FDI in issue is FDI Relating to National Security; and (3) if:</p> <ul style="list-style-type: none"> • the foreign investor has effected FDI requiring prior notification without having filed such a prior notification; • the foreign investor has effected FDI requiring prior notification during the waiting period after submission of its prior notification without the waiting period being terminated early or approval being granted; or • the foreign investor has filed a prior notification for prior approval that contains false information.
		<ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and 	A breach of commitments included in the prior notification (see item 7 above) would be considered as containing false information, and accordingly may result in the punishments and administrative orders mentioned above.
		<ul style="list-style-type: none"> • investment carried out without prior approval. 	The offending foreign investor is subject to the punishments and administrative orders mentioned above.
10.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	In response to the Covid-19 pandemic, the Authority added medicines for infectious diseases and high-level management medical devices as Designated Business Sectors by a notice applicable to FDI conducted on or after 15 July 2020.

Theme	Relevant Item
Absence of response.....	6
Advance Ruling.....	6
Authority.....	2
Commitments.....	7
Conditions.....	7
Covid.....	10
Designated Business Sector.....	4
Exemptions.....	3
Filing Fees.....	6
Filing.....	6
Fines.....	9
Foreign Investors.....	3
Guidelines.....	6
Information Required.....	6
Intragroup transactions.....	3
Negotiation.....	6
Orders.....	7
.....	9
Other Authorities.....	8
Outcome of the Procedure.....	6
.....	7
Power of the Competent Authority.....	7

Theme	Relevant Item
Pre-ruling.....	6
Restricted Activities.....	3
Sanctions.....	9
Thresholds.....	3
.....	4
Timeframe.....	6
Veto Right.....	7