

Cabinet Order No. 280A

Cabinet Order to Partially Revise the Cabinet Order on Inward Direct Investment, etc.

The Cabinet hereby enacts this Cabinet Order pursuant to the provisions of Article 26, Article 27 paragraph 1, Article 55-5 paragraph 1, Article 69-3 paragraph 2 and Article 69-5 of the Foreign Exchange and Foreign Trade Control Act (Act No. 228 of 1949).

This Cabinet Order is to revise part of the Cabinet Order on Inward Direct Investment, etc. (Cabinet Order No. 261 of 1980), as follows:

In Article 2, paragraph 1: “in this item and the next item” shall be revised to “in the next paragraph and item 6, paragraph 1 of the next Article”; “hereinafter in this item” shall be revised to “item 6, paragraph 1 of the next Article”; “calculated by multiplying the number of voting rights” shall be deleted and “by the investment ratio of the said other corporations held by the Foreign Juridical Person, etc.” shall be replaced by “(such voting rights refer to those stipulated in Article 26, paragraph 1, item 3 of the Act)” ; and the remainder of the said paragraph shall be deleted. In Article 2, paragraph 4, “and paragraph 1, item 3 of the next Article” shall be revised to “, paragraph 7, item 2; paragraph 9, item 1-(d)-(2) of this Article; and paragraph 1, items 4 and 6 of the next Article”. In Article 2, paragraph 4, item 2: “Juridical Person, etc. listed in the preceding item” shall be revised to “the Share Acquisitor and Juridical Person, etc. listed in the preceding item”; “all of the total voting rights” shall be revised to “the number of voting rights equivalent to 50% or more”; “(excluding those listed in the preceding item) shall be added after “A Juridical Person etc.” Article 2, paragraph 4, items 3 and 4 are revised as follows:

- (iii) A Juridical Person, etc. (excluding those listed in item 2) who directly holds the number of voting rights equivalent to 50% or more, in the cases where the said Share Acquisitor is a Juridical Person, etc.
- (iv) In the cases where the said Share Acquisitor is a Juridical Person, etc.: such Juridical Person, etc. (excluding those listed in items 1 and 2) that directly holds the number of voting rights equivalent to less than 50% of the total voting rights

of the Share Acquisitor, provided that the total of the following i) and ii) is 50% or more of the total voting rights of the Share Acquisitor: i) the number of voting rights of the Share Acquisitor that is directly held by the Juridical Person, etc. that directly holds the number of voting rights equivalent to less than 50% of the total voting rights of such Share Acquisitor; and the number of voting rights of such Share Acquisitor that is directly held by a Juridical Person that also directly holds the number of voting rights equivalent to 50% or more of the total voting rights of the Juridical Person in question.

In Article 2, paragraph 4, item 5, “the preceding item” shall be revised to “the preceding item 2”; “all” shall be revised to “the number of voting rights equivalent to 50% or more”; and “(excluding those listed in each of the preceding items)” shall be added after “A Juridical Person, etc.” Article 2, paragraph 4, item 6 shall be revised as follows:

- (vi) A Juridical Person, etc. (excluding those listed in any of the preceding items), in which the number of voting rights equivalent to 50% or more is directly held by any of Juridical Persons, etc. listed in the preceding item

In Article 2, paragraph 4, item 7, “item 4” shall be revised to “item 5 and the Juridical Person, etc. listed in the preceding item”; and “(excluding those listed in any of the preceding items)” shall be added after “A Juridical Person, etc.”. In Article 2, paragraph 4, item 8, “the preceding three items” shall be revised to “item 3”; “any of” shall be deleted and “(excluding those listed in any of the preceding items)” shall be added after “A Juridical Person, etc.”

In Article 2, paragraph 4, item 13, “. The same shall apply hereinafter in this item” shall be deleted; and “(excluding those listed in items 1 to 9 and 11)” shall be added after “Other government institutions or public organizations or entities equivalent thereto of a country”.

The following item numbers of Article 2, paragraph 4 shall be changed: item 13 to item 14; item 12 to item 13; and item 11 to item 12. In item 10, “(excluding those listed in items 1 to 9)” shall be added after “A Juridical Person, etc.”. Item 10 shall be changed to item 11 and item 9 to item 10, while a new item, set forth below, shall be added after item 8:

- (ix) The Juridical Person, etc. (excluding those listed in any of the preceding items) in which the number of voting rights equivalent to 50% or more is directly held by a Juridical Person, etc. listed in item 3 and a Juridical Person, etc. listed in

the preceding item.

An item set forth below shall be added in Article 2, paragraph 4:

- (xv) Other non-resident individuals or juridical persons, etc. (excluding those listed in any of the preceding items) in the cases where the Share Acquisitor agrees to exercise voting and other rights entitled to the shareholders of the listed company in question jointly with such non-resident individuals or juridical persons, etc.

Article 2, paragraph 7 shall be revised as follows:

- (7) The amount specified by Cabinet Order specified in Article 26, paragraph 2, item 6 of the Act shall be each of the amounts specified below for each of the following cases:
 - (i) In cases in which, after a loan of money is made to a juridical person having its principal office in Japan pursuant to Article 26, paragraph 2, item 6 of the Act (hereinafter “loan of money”), the balance of such loan of money made to such juridical person neither exceeds the amount specified by the ordinance of the competent ministry nor falls below 100 million yen: the amount specified by the ordinance of the competent ministry; and
 - (ii) In cases in which, after a loan of money is made to a juridical person having its principal office in Japan pursuant to Article 26, paragraph 2, item 6 of the Act, the balance of loans of such loan of money made to such juridical person exceeds the amount specified by the ordinance of the competent ministry referred to in the preceding item: as the amount of deficit held by this juridical person after this loan of money, the amount equivalent to 50% of the amount specified by the ordinance of the competent ministry, less the total amounts of the loan of money in question and the balance of the bonds issued by this juridical person, being offered to specified parties, prescribed in paragraph 9, item 1 (hereinafter in this item, “bonds”) and held by the entity which offered the loan of money to this juridical person (if such deducted amount is below zero, zero shall be applied), (including the total amount of: the balance of the loan of money made by a non-residential individual or juridical person, who falls in any of the items in paragraph 4, in the cases where the party which made the loan of money in this item is identified as the Share Acquisitor specified in paragraph 4; and the balance of bonds acquired by such party,

excluding the amount of the loan of money in question).

In Article 2, paragraph, 9 item 1: “bonds (excluding those which are issued or offered for subscription in foreign countries and for which payment can be received in foreign countries)” shall be revised to “bonds issued by corporations”. Sub-item d of the said item shall be revised as follows:

(d) The acquisition of bonds for which the acquisition amount corresponds to cases of (1) or (2) below and falls below the amounts specified in each of the corresponding cases:

(1) In the cases where the amount of balance of the bonds of the corporation in question, which will be held [by the investor] after the acquisition of such bonds, neither falls below 100 million yen nor exceeds the amount specified by the ordinance of the competent ministry: the amount specified by the ordinance of the competent ministry; or

(2) In the cases where the amount of balance of the bonds, which will be held [by the investor] after the acquisition of such bonds, exceeds the amount specified by the ordinance of the competent ministry as referred to in (1): as the amount of deficit held by the corporation in question after this acquisition, the amount equivalent to 50% of the amount specified by the ordinance of the competent ministry as the amount of deficit borne by this corporation, less the total amounts of outstanding balance of the bonds and the outstanding balance of the loan of money made to this corporation by the acquiring party of the bond (if such deducted amount is below zero, zero shall be applied), (including the total amount of: the balance of the loan of money made by a non-residential individual or juridical person, who falls in any of the items in paragraph 4, in the case in which the party which has acquired the bonds is identified as the Share Acquisitor specified in paragraph 4; and the balance of bonds acquired by such party, excluding the amount of the acquisition in question).

Article 3, paragraph 1, item 5 shall be deleted. In item 4 of the same Article, same paragraph: “, consolidation or transfer of” shall be revised to “or consolidation of ,” while this item shall be changed to item 5, item 3 shall be changed to item 4, and

item 2 shall be changed to item 3. Item 6 shall be revised as follows:

- (vi) Those acts that are listed in Article 26, paragraph 2, items 1, 3, 4 and 6 of the Act and that are performed by those parties that are listed corporations, etc. among those set forth in Article 26, paragraph 1, item 3 of the Act, and the number of shares directly held by each shareholder (limited to Foreign Juridical Persons, etc. or other corporations) of such listed corporations (including those shares in such corporations that are held by non-resident individuals or juridical persons that fall in the category of any item of paragraph 4 of the preceding Article, if each such shareholder is the Share Acquisitor prescribed in the same paragraph 4) is below 10% of the total number of issued shares of each of such corporations.

In Article 3, paragraph 2, item 1, “with regard to Inward Direct Investment, etc. listed in Article 26, paragraph 2, item 6 of the Act, loans which are equivalent to an amount of less than 10 billion yen shall be excluded” shall be revised to “with regard to Inward Direct Investment, etc. listed in Article 26, paragraph 2, items 1 to 4 of the Act and in the preceding Article, paragraph 9, item 1, those cases shall be included where businesses that belong to the business types designated by the ordinance of the competent ministry are performed by the subsidiaries of corporations specified in these items (subsidiaries in this context refer to those specified in Article 2, item 3 of the Companies Act (Act No. 86 of 2005) and limited to those located in Japan; hereinafter the same) and by those entities (excluding subsidiaries) specified by the ordinance of the competent ministry as other Juridical Persons, etc., to whose finance, marketing and business policies, such corporations can exert influences”.

In Article 7, item 1, “The same shall apply hereinafter in this item” shall be deleted and “(when its subsidiaries or entities regulated under Article 3, paragraph 2, item 1 as those specified by any ordinance of the competent ministry perform businesses of business types specified by any ordinance of the competent ministry specified in the same item, those ministers having jurisdiction over such businesses are also included. The same shall apply in item 5)” shall be added after “The minister having jurisdiction over the business which the said corporation operates”.

Supplementary Provisions

(Effective Date)

1. This Cabinet Order shall come into force on September 28, 2007.

(Transitional Measures)

2. With regard to notifications made before the enforcement of this Cabinet Order pursuant to Article 27, paragraph 1 of the Foreign Exchange and Foreign Trade Control Act, and with regard to Inward Direct Investment, etc. prescribed in Article 26, paragraph 2 of the said Act pertaining to the reports prescribed in Article 55-5, paragraph 1 of the Act, made before the enforcement of this Cabinet Order, the provisions then in force shall remain applicable.
3. With regard to the penal provision concerning the act conducted prior to the enforcement of this Cabinet Order and the act conducted after the enforcement of this Cabinet Order pertaining to the matters for which the provisions then in force shall remain applicable pursuant to the provision of the preceding Article, the provisions then in force shall remain applicable.

Reason

In order to arrange adequate adjustment of Inward Direct Investment, etc., in consideration for the expansion of investment activities directed to Japan and for the diversification of the forms of such activities, there are needs to conduct necessary reviews concerning the scope of corporations deemed as foreign investors and scope, etc. of share acquisition and loans of money that are identified as Inward Direct Investment, etc.