

Review of inward investment regulations based on the Foreign Exchange Act (Summary about revision of Government and Ministerial ordinance, Public notice)

Ministry of Economy, Trade and Industry

1. Purpose of regulation review

Japan has inward investment regulations limited of the specific type of industry sectors (by the system of advance notification) based on the Foreign Exchange and Foreign Trade Act (herein referred to as "the Foreign Exchange Act") within the range of international rules.

Japan has not reviewed the regulations for over 15 years, since the Foreign Exchange Act was amended in 1991. These regulations may not be sufficiently in line with the changed security environment surrounding Japan and trends in international investment activity.

For the active acceptance of overseas investment, as an important infrastructure that supports a free and open investment environment, it is essential to establish a system and infrastructure that can appropriately deal with the various problems caused by increasingly active and complex international investment activities.

The inward investment by certain foreign investors must not result in a situation that produces a significant impact on Japan's security, such as the proliferation of weapons of mass destruction or damage to the defense production and technology infrastructure. For this reason, the required revisions should be made with a view to appropriately prevent these situations.

2. Revision of items subject to notification

a) Prevention of the outflow of important technology in security (Revision of Public notice; Refer to the attached paper.)

There is a risk of unlawful outflow of technology to manufacture dual-use items with a high probably of conversion to use in weapons of mass destruction when foreign investors connected to certain countries of concern and international terrorist organizations. The following products should be made subject to the system of prior notification in order to adequately prevent this type of situation from occurring.

- (1) Dual use items relating to weapons of mass destruction listed in rows 2 to 4 of appended table 1 of the Export Trade Control Order.

(2) Highly sensitive general-purpose items relating to conventional weapons listed in rows 5 to 15 of appended table 1 of the Export Trade Control Order.

b) Maintenance of defense production and technology infrastructure (Revision of Public notice; Refer to the attached paper.)

In order to appropriately prevent damage to the defense production and technology infrastructure caused by inward investment by foreign investors, the manufacture of arms and aircraft would be continuously regulated. Furthermore, the following industry sectors should be made subject to the system of prior notification; these are the materials manufacturing sector, accessories or equipment specially designed for the production of arms or aircrafts, and software publishing of programs specially designed to use in arms and/or for satellites.

3. Revision of subject transactions

a) Transactions that would be made subject to regulation

(1) Inward direct investment in parent companies that control subsidiaries engaged in businesses subject to regulation (Revision of Government and Ministerial ordinance)

Following the lifting of the ban on the system of holding companies, and the establishment of a legal system for corporate restructuring, considering the fact that it has become the norm for subsidiaries of listed companies to carry out businesses targeted for regulation, it is necessary to include the direct inward investment of the type of industry targeted for regulation, by including regulation of businesses carried out by consolidated subsidiaries that can exert an important influence on the business policy.

(2) Inward direct investment in which multiple foreign investors agree to exercise their voting rights collectively (Revision of Government ordinance)

The number of such cases has increased, in which capitally unrelated multiple investors have agreed to collectively exercise voting rights and hence affect the running of a company. It is necessary to expand the scope of “special relations,” by combining the regulations’ scope with the large holdings report system based on the Securities Exchange Act, i.e. the calculations made from the total number of shares held, including those “persons who have agreed to collectively exercise their voting rights.”

(3) Acts by foreign investors to obtain shares of Japanese companies on foreign markets (Revision of Government ordinance)

The number of cases has increased, in which the issue of the stocks and new stock reservation tickets in a foreign market. Acts for foreign investors to obtain share on foreign markets should be regulated with a view to prevent misuse of the system.

b) Transactions that would be excluded from regulation

(1) Handling of listed companies that have a high ratio of foreign shareholder voting (Revision of Government ordinance)

Following the internationalization of the financial capital market and the decrease of interlocking shareholding, the number of listed companies classed as “foreign investors” are on the increase. Even if it is the case that companies have over a 50% ratio of foreign shareholder voting, it is appropriate to stipulate provisions that exclude from the scope of regulations those listed companies whose shareholder ratio of an individual foreign investor is not more than the 10% fixed rate.

(2) Long-term loans and acquisition of private offering bonds (Revision of Government ordinance)

Amid the increase in loan dealings among enterprise groups, it is necessary to include lending in cases that the amount of the total of the balance becomes 50% of liabilities of the enterprise to the scope of regulations so that the scope of regulations would be limited only to the lending of loans and the acquisition of private offerings of bonds that are closely related to management control.

(3) “Allotment of shares without contribution” and “Shares Subject to Call” etc. (Revision of Ministerial ordinance)

“Allotment of shares without contribution” (Company Act, Article 185), and “Shares Subject to Call” which means the shares in cases where a Stock Company provides that such Stock Company may redeem such shares upon the occurrence of a specified event; (Same Act, Article 2 (19)), and “Share Options subject to Call” (Same Act, Article 273 (1)) should be out of the scope of the regulations, because it is difficult to submit advance notification in these cases of the acquisition of stocks not by the will of a foreign investor.

4. Revision of administrative procedures

a) Development of procedures for administrative agencies to request reports (Revision of Ministerial ordinance)

In order to appropriately carry out inward investment regulations, a broad scope of information, such as detailed information regarding management conditions of and products made by the company to be invested in, and attributes of the foreign investor, must be accurately gathered during the examination process of individual matters. It is necessary to construct the system in which administrative agencies request reports from involved parties such as foreign investors or companies that are to be invested in.

b) Development of notification format (Revision of Ministerial ordinance)

Description items of for the notification format would be developed for items about the investment purpose, the nature of the investor and the business conducted by the company to be invested in (including its consolidated subsidiary or subsidiaries).

5. The day of enforcement

Review of the Act will be enforced after a reasonable period of about one month from the day of promulgation. It will be the beginning of August.

(Appended sheet)Type of industry obliged to prior report based on the reason for national security

- () Manufacturing industry involved in the making of the following items
 - (a) Arms or goods specially designed for activities that support the use of arms (including transportation, communication, supplying, relief or search) or for defense against armed attack
 - (b) Aircraft
 - (c) Satellites, rockets or equipment specially designed for launching, tracking control or using them, or propellants or raw materials
 - (d) Nuclear reactors, turbines and dynamos for nuclear reactors, or nuclear sources or nuclear fuel materials
 - (e) Accessories of goods listed in (a) to (d), the components of goods listed in (a) to (d) or their accessories, materials specially designed to be used for the production of these, or any equipment, tools, measuring, inspection and test equipment to produce them or related to their production

- () Repair of machinery pertaining to goods listed in the preceding item. (a) to (e)

- () Software publishing of programs specially designed for use in the goods listed in item (). (a) or (b)

- () Software publishing of programs specially designed for satellites, rockets, or the launching, tracking control

- () Manufacturing industry of goods listed in rows 2 to 4 of the appended table 1 of the Export Trade Control Order(Cabinet Order No.378 of 1949)

- () Manufacturing industry listed in row 5 (3),(5) to (8),(14),(16) or (18),in row 6 (1) to (4),(6) or (7),in row 7 (1),(6),(7),(9) or (16) to (19), in the middle column of row 8, in row 9 (1),(3) or (6) to (11), in row 10 (1) to (4),(6),(7),(9) or (11), in row 12 (1), (5) or (6), in row 13 (5) or in the middle column of row 15 of the appended table 1 of the Export Trade Control Order