TMI Associates

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# Japan Corporate & Finance Insights

## Amendment to the Foreign Exchange and Foreign Trade Act (Part I)



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## I. Summary

On June 5, 2026, an Act to partially amend the Foreign Exchange and Foreign Trade Act (the "FEFTA"; the Act to partially amend FEFTA, the "Amendment Act") was promulgated[1]. The effective date is to be "a date specified by Cabinet Order within a period not exceeding one year from the date of promulgation."[2]

The Amendment Act was prepared in response to the "Report on the Desirable Framework for the Foreign Direct Investment Screening System and Related Matters" (the "Report") published on January 7, 2026 by the Council on Customs, Tariff, Foreign Exchange and Other Transactions[3]. The Amendment Act primarily revises the regime governing foreign direct investment, etc. ("FDI") and specified acquisitions. The principal amendments are outlined below:

(i) Addition of a new category of "FDI" (regulation of indirect acquisition)
(ii) Codification of measures to eliminate the risk that FDI and specified acquisitions may give rise to situations undermining Japan's national security, etc. (the "Measures Relating to National Security, etc.")
(iii) Revision of the deeming provisions regarding foreign investors (to prevent circumvention by high-risk non-residents)
(iv) Introduction of a post-investment intervention regime for FDI and specified acquisitions that are not subject to prior notification
(v) Consultation with the Prime Minister and other relevant authorities

This article discusses items (i) and (ii) above. Items (iii) through (v) will be addressed in Part II. In addition to the foregoing, the Amendment Act also includes revisions concerning the confirmation obligations of banks, etc.; however, we will not cover those revisions.

## II. Addition of a New Category of "FDI" (Regulation of Indirect Acquisition)

### 1. Current Law

Under the FEFTA, where a foreign investor intends to conduct "FDI" or a "specified acquisition" with respect to a Japanese company (the "Investee Company") or its Japanese subsidiaries, etc. that operate a business in "Designated Business Sectors"[4], the foreign investor is, in principle, required to submit a prior notification[5].

Under the current law, "FDI" includes, among other things, the direct acquisition of shares or voting rights in the

[1] https://www.mof.go.jp/policy/international_policy/gaitame_kawase/press_release/20260312152131.html
[2] However, only the amendment described in item (v) of the body text, "Consultation with the Prime Minister and other relevant authorities" came into effect on the date of promulgation.
[3] https://www.mof.go.jp/about_mof/councils/customs_foreign_exchange/sub-foreign_exchange/report/20260106191944.html
[4] Designated Business Sectors have been designated in a public notice issued by the Ministry of Finance of Japan (the "MOF") and competent ministries pursuant to the cabinet order and ministerial ordinance, etc. They include business sectors that relate to the national security of Japan, the maintenance of public order in Japan and the protection of the Japanese public.
[5] Article 27, Paragraph 1 and Article 28, Paragraph 1 of the FEFTA

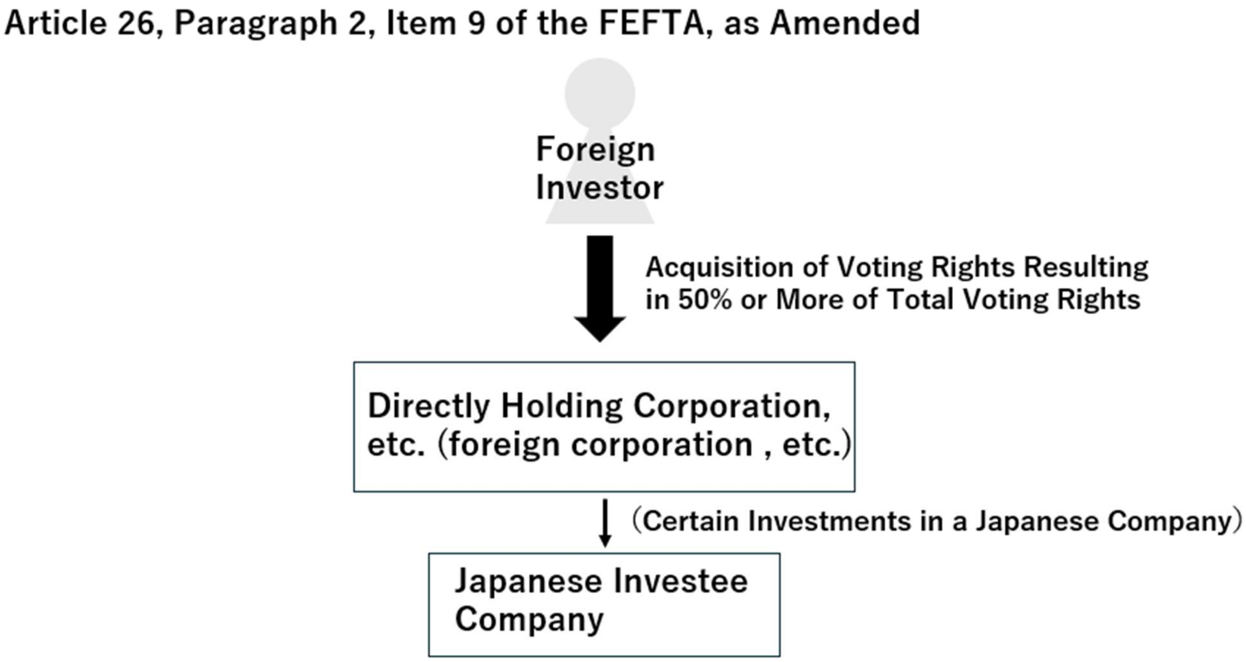
Investee Company (i.e., a Japanese company), and consent to proposals to appoint the foreign investor or its related parties as officers of the Investee Company[6]. However, the acquisition of shares in a foreign corporation, etc. that holds shares in the Investee Company (an indirect acquisition), as well as consent to proposals to appoint officers of such foreign corporation, etc., are not included within the scope of "FDI".

## 2. The Amendment Act

### (1) Overview

The Amendment Act newly adds the following actions to the definition of "FDI":

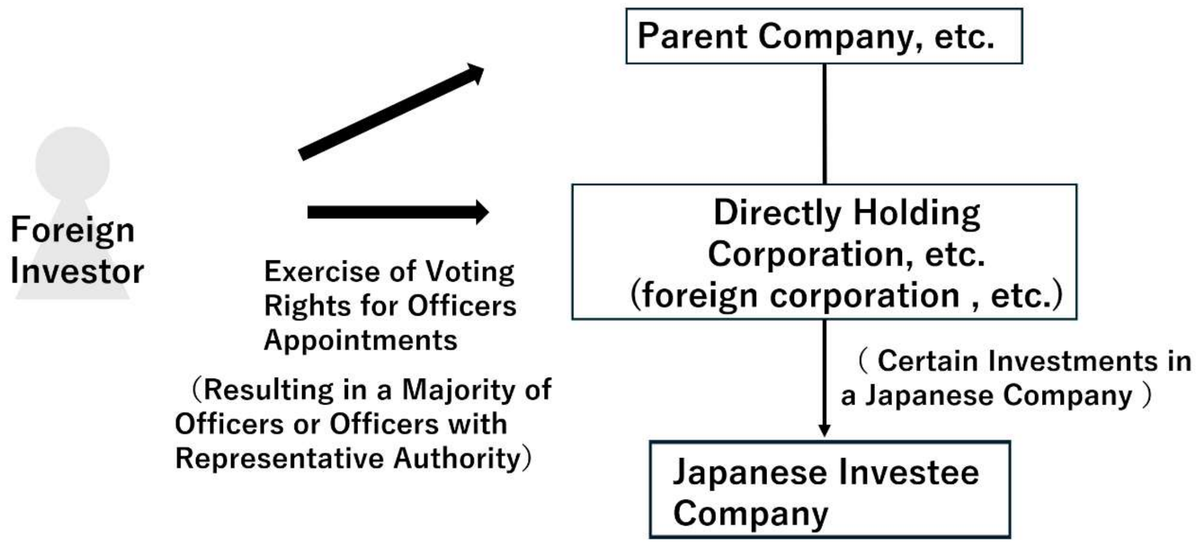
- The acquisition of voting rights in a foreign corporation, etc. that holds shares or voting rights in the Japanese Investee Company above a specified threshold, where, as a result of such acquisition, the foreign investor will hold, either (i) directly or (ii) through a corporation 50% or more of whose voting rights are directly held by such foreign corporation, etc. or other entities specified by Cabinet Order (collectively, "Closely Related Persons"), 50% or more of the total voting rights of the directly holding corporation, etc. (i.e., the foreign corporation, etc. that holds shares, etc. in the Japanese Investee Company) (Article 26, Paragraph 2, Item 9 of the FEFTA, as amended).




- The exercise of voting rights with respect to the appointment of officers of either (i) the directly holding corporation, etc., or (ii) its immediate parent company, etc., where, as a result of such appointment, the foreign investor or its officers and related persons will constitute a majority of the officers or officers with representative authority (Article 26, Paragraph 2, Item 10 of the FEFTA, as amended).

[6] Article 26, Paragraph 2, Item 5 of the FEFTA and Article 2, Paragraph 11, Item 1 of the Cabinet Order on foreign direct investment

Article 26, Paragraph 2, Item 10 of the FEFTA, as Amended




**(2) Article 26, Paragraph 2, Item 9 of the FEFTA, as Amended**

Article 26, Paragraph 2, Item 9 of the FEFTA, as amended, applies where the following requirements are satisfied:

(a) a foreign investor acquires voting rights in another foreign corporation, etc., and, as a result of such acquisition, newly comes to hold, either directly or through Closely Related Persons, 50% or more of the total voting rights of the directly holding corporation, etc.; and

(b) such directly holding corporation, etc. (i.e., the foreign corporation, etc. that holds shares, etc. in the Japanese Investee Company) owns shares or equity interests in an unlisted Japanese company, or holds shares or voting rights in a Japanese listed company above a specified threshold.

With respect to requirement (a) above, the calculation includes not only the voting rights in the directly holding corporation, etc. acquired directly by the foreign corporation, etc., but also those held directly by its Closely Related Persons. The precise scope of Closely Related Persons to be included in this aggregation remains to be clarified through the relevant Cabinet Order.

With respect to requirement (b) above, the threshold for holdings of shares or voting rights in a Japanese listed company is defined as "a ratio to be specified by Cabinet Order, which shall not be less than 1%".

In this regard, the Report states that, as a general rule, where the direct holder owns 1% or more of the voting rights, etc. in a Japanese Investee Company, it is appropriate to require the indirect acquirer to submit a prior notification. At the same time, the Report also states that, for indirect acquirers that are not categorically considered to present a high need for review (that is, where the indirect acquirer is not a foreign investor who is unable to utilize the exemption from prior notification), no filing should be required if the direct holder owns less than 50% of the voting rights, etc. in the Japanese company. Accordingly, it is possible that the threshold for holdings of shares or voting rights in a

Japanese listed company may be set at 1% where the indirect acquirer is a foreign investor who is unable to utilize the exemption from prior notification, and at 50% for other foreign investors.

In principle, a certain foreign investor, such as the following, are considered to be "a foreign investor who is unable to utilize the exemption from prior notification": (i) foreign governments, (ii) foreign government-owned companies, and (iii) Obligated Intelligence Collectors. Obligated Intelligence Collectors are individuals, corporations or other organizations that have obligations to cooperate with foreign governments, etc. in collecting information (the collection of information that is highly likely to undermine Japan’s national security, etc.) based on agreements with those foreign governments or under foreign laws or other similar regulations. Chinese companies and their subsidiaries could be included within the concept of (iii) Obligated Intelligence Collectors. If the abovementioned threshold is specified by Cabinet Order, the 1% threshold for holdings of shares or voting rights in a Japanese listed company will apply when these companies are indirect acquirers.

Even where the Japanese Investee Company is an unlisted company, (i) if the indirect acquirer is not categorically considered to be a high-risk investor (i.e., is not considered to be “a foreign investor who is unable to utilize the exemption from prior notification”), a prior notification will be required only where the indirect acquirer will come to hold 50% or more of the shares or voting rights in such Japanese company, with holdings below 50% to be exempted by Cabinet Order; whereas (ii) if the indirect acquirer is categorically considered to be a high-risk investor, no threshold will apply, and the exemption will not be available even where the acquisition involves as little as a single share in such Japanese company. The details of the relevant threshold should be closely monitored as the relevant Cabinet Order are amended.

**(3) Article 26, Paragraph 2, Item 10 of the FEFTA, as Amended**

Article 26, Paragraph 2, Item 10 of the FEFTA, as amended, applies where the following requirements are satisfied:

(a) voting rights are exercised with respect to the appointment of officers of either the directly holding corporation, etc., or a foreign corporation, etc. that directly holds voting rights representing 50% or more of the voting rights of such directly holding corporation, etc.; and

(b) as a result of such appointment, the person exercising the voting rights (i.e., the foreign investor) and its officers and related persons newly come to constitute a majority of the officers or officers with representative authority.

With respect to requirement (a) above, in addition to the directly holding corporation, etc. itself, the provision also covers the exercise of voting rights concerning the appointment of officers of corporations, etc. that directly hold 50% or more of the total voting rights of the directly holding corporation, etc. or other foreign corporations, etc. to be specified by Cabinet Order. It is clear that, in addition to the directly holding corporation, etc., a parent company directly holding 50% or more of its total voting rights will be covered; however, the scope of such "other foreign corporations, etc. " remains to be clarified through the Cabinet Order.

With respect to requirement (b) above, the provision also covers cases where, in addition to the person exercising the voting rights, such person's officers and related persons to be specified by Cabinet Order will come to constitute a majority of the officers or officers with representative authority. The scope of such "related persons" remains to be clarified through the relevant Cabinet Order.

### 3. Practical Implications

With the introduction of the indirect acquisition rules, even where a foreign investor conducts an M&A transaction or makes an investment in which the target company is a foreign corporation, etc., a prior notification under the Japanese FDI regime may be required after the Amendment Act takes effect if, as a result of the transaction, the foreign investor's voting rights ratio newly reaches 50% or more and the relevant foreign corporation, etc. (i.e., the directly holding corporation, etc.) has made certain investments in a Japanese company.
In addition, after the amendment, it will be important to note that a prior notification under the Japanese FDI regime may also be required when appointing officers of a foreign corporation, etc. (i.e., the directly holding corporation, etc.) that has made certain investments in a Japanese company, or of its parent company, etc.

However, under the draft Cabinet Order and Ministerial Order, where an indirect acquirer that is not a high-risk investor acquires voting rights in the directly holding corporation, etc. from its own parent company or a group company of such parent company (typically in the context of an intra-group reorganization or transfer of equity interests), no prior notification will be required. The details of the exemption requirements should be closely monitored as the relevant Cabinet Order and Ministerial Order are amended.

## III. Codification of Measures Relating to National Security, etc.

### 1. Current Law

In practice, in the prior notification process under the FEFTA, the relevant Japanese ministry overseeing the relevant business sector may request that the submitter include, in the "Method of Involvement in Management in Connection with the Acquisitions or Discretionary Investments" section of the notification form, a statement undertaking to comply with certain matters concerning measures relating to national security, etc. (for example, an undertaking not to make proposals concerning the discontinuance, reduction, modification, or transfer of businesses in Designated Business Sectors. We refer to these matters subject to compliance as the "Compliance Commitments" below). The contents of the Compliance Commitments will be determined through consultations with the relevant Japanese ministry. Under the current law, however, even if agreement is reached through such consultations, there is no mechanism permitting the correction of a notification that has already been submitted. Instead, the established practice has been for the submitter to withdraw the original notification that has already been submitted and then resubmit a new notification containing the agreed Compliance Commitments. The foreign exchange authorities are generally understood to take the position that, if the submitter breaches the Compliance Commitments, such breach may be treated as having made a false notification, thereby subjecting the submitter to ordering measures[7].

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[7] Shintaro Okawa, *The Ministry of Economy, Trade and Industry's Approach to Screening foreign direct investment, etc. under the Foreign*

Under the current law, once a notification is withdrawn and resubmitted with the Compliance Commitments, the statutory waiting period is reset. Although, in practice, the review is often completed within five business days after resubmission, the submitter remains in an uncertain position because the timing of completion of the review cannot be predicted with certainty.

In addition, while the authorities have taken the view that a breach of the Compliance Commitments may constitute a false notification and thus be subject to the ordering measures, it has not been entirely clear under the current law whether an actual breach would indeed be treated as a false statement, nor what specific penalties or measures could be imposed.

## 2. The Amendment Act

The Amendment Act expressly codifies the treatment of Measures Relating to National Security, etc. as follows:

- Where a foreign investor undertakes Measures Relating to National Security, etc. in connection with a prior notification, the foreign investor must state such measures in the notification form (Articles 27, Paragraph 1, Item 4 and 28, Paragraph 1, Item 4 of the FEFTA, as amended).
- If the submitter wishes to revise Measures Relating to National Security, etc. after filing the notification but during the waiting period, the submitter may submit a notification of such revision (Articles 27-3, Paragraph 1 and 28-3, Paragraph 1 of the FEFTA, as amended).
- If a notification of revision is submitted and the original waiting period would expire before the date falling 14 days after the acceptance of the revision notification, the waiting period is extended until the expiration of such 14-day period (Articles 27-3, Paragraph 2 and 28-3, Paragraph 2 of the FEFTA, as amended).
- If the submitter wishes to change Measures Relating to National Security, etc. after completion of the review, the submitter must submit a notification of such change (Articles 27-4, Paragraph 1 and 28-4, Paragraph 1 of the FEFTA, as amended).
- Where Measures Relating to National Security, etc. have been notified but are not actually implemented, the submitter may be subject to ordering measures (Article 29, Paragraph 1, Item 3 of the FEFTA, as amended).
- Notifications of revisions to Measures Relating to National Security, etc. during the waiting period, and notifications of changes after the expiration of the waiting period, could be subject to recommendations and orders (Articles 27, Paragraphs 5 and 7 through 12; 27-4, Paragraph 2; 28, Paragraphs 5 and 7; and 28-4, Paragraph 2 of the FEFTA, as amended). Failure to comply with such recommendations or orders may result in ordering measures (Article 29, Paragraphs 5 and 6 of the FEFTA, as amended).

## 3. Practical Implications

Under the Amendment Act, where the inclusion of Compliance Commitments in the notification form is required, the submitter will no longer need to withdraw the original notification and resubmit a revised one. Instead, the submitter will either include the relevant commitments in the initial filing or amend the notification during the review period

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*Exchange and Foreign Trade Act*, Shunkan Shoji Homu, No. 2247, p. 18

without withdrawing and resubmitting it. In addition, it is clarified that the waiting period will not be extended if the original expiration date falls after the date when 14 days have elapsed from the acceptance of the revision notification. This clarification should make it significantly easier for submitters to predict the timing of completion of the review.

The Amendment Act appears to contemplate that the submitter will voluntarily state the Measures Relating to National Security, etc. However, since in practice these measures impose certain restrictions on the contemplated investment, it may be difficult for the submitter to propose appropriate language on its own initiative. Accordingly, it is expected that the existing practical process will continue, whereby the relevant Japanese ministry provides draft language, and the final wording is determined through consultation. Nevertheless, future developments in administrative practice should be closely monitored.

The clarification that a breach of the Compliance Commitments may give rise to ordering measures is significant for both submitters and the authorities, as it removes a degree of legal uncertainty regarding the consequences of non-compliance.

Finally, the Report states that it would be appropriate to provide, through guidelines, etc., categories and examples of Measures Relating to National Security, etc. that should be included in notification forms. It is therefore possible that such guidelines will be issued in the future.

As of the date of writing, public comments are being solicited on the draft Cabinet Order, etc. for the Development of Relevant Cabinet Orders in Connection with the Amendment Act. Accordingly, it will be necessary to closely monitor future legislative and regulatory developments.

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If you have any questions regarding the matters covered in this memorandum, please reach out to your usual TMI contact or the attorneys listed above.

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