

Understanding Japan's New Foreign Direct Investment Regime – An M&A Perspective

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Highlights

- Recent changes to Japan's foreign direct investment ("FDI") regime implemented from the latter half 2019 through to July 2020 will need to be considered in the planning and scheduling of inbound M&A transactions going forward.
- Both public and private M&A will be affected by the broadening of the list of designated sectors in which FDI activity will be subject to prior notification. In particular, this is expected to be a consideration in the acquisition of Japanese companies engaged in businesses related to (i) information/communications technology; and (ii) pharmaceuticals and medical devices needed to respond to Covid-19.
- Public M&A will be affected by the lowering of threshold for triggering prior notifications for FDI activity in designated sectors. While exemptions accompany the new rules, careful consideration of the eligibility requirements and conditions for the exemptions will be advisable if they are to be sought.

Japan's Foreign Exchange and Trade Act ("FEFTA")¹ began to come under the spotlight in the latter half of 2019 when Japanese authorities began announcing changes to the regulation of FDI under the FEFTA. The changes which have garnered the greatest attention are those which expand the scope of transactions that will require foreign investors to file an FDI notification to the Japanese government prior to the acquisition of a Japanese company's shares ("**Pre-Closing FDI Notification**"). The changes include:

- The addition of the following businesses to the list of businesses that will trigger a Pre-Closing FDI Notification: (a) businesses relating to information/communication

¹ (Act No. 228 of December 1, 1949).

technology (equipment, software and services); and (b) businesses relating to the manufacture of certain pharmaceuticals and “specially controlled medical devices”; and

- The lowering of the threshold for triggering a Pre-Closing FDI Notification for acquisitions of listed Japanese companies from 10% to 1% of the company’s shares² subject to the availability of some limited exemptions.

In a fresh look at Japan’s FDI regime, we take stock of these developments from an M&A perspective and provide a guide to the “new normal” for foreign investors planning acquisitions in Japan.³

1 How did we get here?

Article 27(1) of the FEFTA calls for an examination of FDI in certain business sectors bearing upon national security or otherwise of significance to the Japanese economy⁴ (“**Designated Businesses**”). In the past, because Designated Businesses for the most part were limited to distinctive sectors such as natural resources, infrastructure or technology that could be applied towards weapons of mass destruction, FEFTA was for many years not a major consideration for foreign investors in the case of most M&A transactions.

Then came the dawn of 5G technology and with it, global security concerns over China’s dominance in the information/communications industry. On May 27, 2019, less than two weeks after the U.S. government announced the “Executive Order on Securing the Information and Communications Technology and Services Supply Chain”, the Japanese government announced that various businesses in the information/communications technology sector would be added to the list of Designated Businesses.⁵ Additional announcements in late 2019 promised further changes which, among other things, would affect listed company share transactions. By the end of 2019, it was (momentarily) believed that these would be the extent of the amendments to Japan’s FDI regime for some time.

Then came the pandemic. Following similar moves by governments across the world to protect their domestic medical industries during the outbreak of Covid-19, the Japanese government

² Under the new rules, in short, the threshold will be triggered whether calculated as a percentage of the target company total outstanding voting shares or all outstanding shares regardless of class. It is unclear how much impact this change will have in case of listed company acquisitions since the Japanese stock exchanges permit the listing of class shares only on a limited basis.

³ The amendments that came into effect on May 8, 2020 also include provisions which require a prior notification under the FEFTA for different types of share related transactions as well as the exercise of voting rights in a Japanese corporation. Please see a summary of some of those developments [here](#). For the purposes of this newsletter we shall focus on the developments that we consider to be the most relevant to planning an acquisition in Japan.

⁴ Article 27(1) of the FEFTA; Article 3(2)-1, Cabinet Order; Article 3(3), Ministerial Order

⁵ Ministry of Economy, Trade and Investment, https://www.meti.go.jp/english/press/2019/0527_001.html

also took action. On June 15, 2020 the Japanese government announced that industries involving the manufacture of certain pharmaceuticals and “specially controlled medical devices”⁶ (“**Designated Pharma and Medical Device Businesses**”), would also be added to the list of Designated Businesses.⁷ The same announcement also affirmed that Designated Pharma and Medical Device Businesses would be treated as particularly sensitive Designated Businesses for which FDI could pose a particularly high risk to national security or the Japanese economy⁸ (“**Core Sectors**”). This pronouncement came into effect from July 15, 2020.

2 The Basics

Much of the basic framework of the FDI regime continues to be the same after the amendments. Being aware of these basics helps make sense of the overall process.

2.1 Where are the FDI provisions found?

The FEFTA is primarily under the jurisdiction of Japan’s Ministry of Finance and Ministry of Economy, Trade and Industry (“**METI**”). FDI represents only a part of the matters covered by the FEFTA which leaves many of the details be determined by subordinate legislation. Japan’s FDI regime is actually an intricate puzzle comprised of many different pieces found primarily in the following sources.

- (a) Chapter V (Foreign Inward Direct Investment) and Chapter VI-2 (Reports) of the FEFTA

The basic framework for the FDI regime is found in Chapter V of the FEFTA. Details such as which businesses are to be treated as Designated Businesses and Core Businesses are left to be determined by Cabinet⁹ order.

⁶ “Specially controlled medical devices” are medical devices designated by the Minister of Health Labor and Welfare (“**MHLW**”) as warranting stringent regulation due to their potential risk to human health (Article 2(5), Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (Act No. 145 of August 10, 1960.)) These designated devices are further classified by the MHLW as either Class III (for example ventilators) or Class IV (for example, pacemakers).

⁷ Ministry of Economy, Trade and Investment, https://www.meti.go.jp/english/press/2020/0615_001.html

⁸ The concept of Core Businesses is found in Article 27-2(1) of the FEFTA; Article 3-2(2)-2, Cabinet Order; Article 3-2(3), Ministerial Order.

⁹ The Cabinet is the executive branch of the Japanese government, consisting of the Prime Minister and various Ministers of State, including Ministers without portfolio and the Chief Cabinet Secretary.

- (b) The Cabinet Order on Inward Direct Investment (“**Cabinet Order**”)¹⁰

The Cabinet Order further leaves certain details such as the formalities for FEFTA filings and the designation of Designated Businesses and Core Businesses to be determined by an order of the relevant Ministries.

- (c) The Order on Inward Direct Investment (“**Ministerial Order**”).¹¹

The formalities for FDI filings such as the prescribed forms and other procedural aspects are found in the Ministerial Order. As to the designation of businesses to be treated as Designated Businesses and Core Businesses, the Ministerial Order provides that this is left to the discretion of the relevant Ministries to determine.

- (d) Pronouncements by the relevant Ministers on matters Designated by the Ministerial Order

As mentioned above, the Ministerial Order gives the relevant Ministries the authority to determine which businesses are to be designated as Designated Businesses. Therefore, no amendment to a law or an order is needed to expand the list of Designated Businesses as long as it stays within the framework contemplated by the FEFTA. A public announcement in accordance with administrative procedure is however, required. The nomenclature of the industries/sectors selected for special treatment as a Designated Business will follow the standard industry classifications applied by the Japanese government.

2.2 Non-Public Paper Filing

FDI filings are not public disclosures. In this way, they are very different from the filings that can be triggered under Japanese stock exchange rules or Japanese securities laws which also need to be considered when acquiring the shares of a company listed on a Japanese stock exchange.

To illustrate by comparison, the “Large Shareholding Report”¹² is one example of a filing which is for public disclosure. This must be filed by investors (regardless of nationality) under Japanese securities laws to disclose acquisitions or holding of 5% or more of the shares of a company listed on a Japanese stock exchange. This must be filed electronically and once filed

¹⁰ Cabinet Order No. 261 of October 11, 1980, as amended.

¹¹ Order of the Prime Minister's Office, Ministry of Finance, Ministry of Education, Science and Culture, Ministry of Health and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of International Trade and Industry, Ministry of Transport, Ministry of Posts and Telecommunications, Ministry of Labor and Ministry of Construction No. 1 of November 20, 1980.

¹² Article 27-23(1), Financial Instruments and Exchange Act (Act No. 25 of April 13, 1948.)

can be searched online by any member of the public on the financial regulator's EDINET¹³ platform.

In contrast, FDI notifications must be submitted on paper through the Bank of Japan addressed to the Minister of Finance and any other Ministers having jurisdiction over the Designated Business relevant to the filing. Such notifications are confidential and there is no electronic or physical database open to the public for searching FDI filings under FEFTA. As to accessibility to the "human database" of the Ministry staff themselves, as public servants they are subject to secrecy obligations with respect to all confidential information that they acquire in the course of their duties.¹⁴

2.3 Why is the Bank of Japan Involved?

Japan's central bank provides various services to the Japanese government. Under Japan's FDI regime, these services include various functions relating to the processing FDI filings as delegated to the Bank of Japan under the FEFTA.¹⁵ These include accepting the forms prescribed under the Ministerial Order, serving as the point of contact for filers regarding their filings and providing guidance to prospective filers on whether FEFTA obligations apply to their contemplated transactions and if so, how to prepare their filings. The personnel of the Bank of Japan are also subject to statutory confidentiality obligations with respect to the information they acquire in the course of their duties.¹⁶

2.4 Types of FEFTA Filings Applicable to M&A in Japan

(a) Pre-Closing FDI Notification for Acquisitions of Designated Businesses

The Pre-Closing FDI Notification has two components. The main part is to be submitted prior to the transaction on Form 1. If the Japanese government has no issue with the transaction, the foreign investor will be notified through its Japan agent that the notification on Form 1 has been accepted and cleared and the foreign investor may proceed with the transaction.

After closing, the foreign investor should then submit a simple follow up report on Form 19 to report the completion of the transaction ("**Completion Report**").^{17 18}

¹³ Short for the "Electronic Disclosure for Investors' NETwork" operated by Japan's Financial Services Agency.

¹⁴ Article 100 (1), National Public Service Act (Act No. 120 of October 21, 1947). Although the National Public Service Act does leave room for the disclosure such confidential information for investigatory or other official purposes, these exemptions are limited. Accordingly, it can reasonably be expected that Ministry staff will keep private information from FDI filings confidential in all but the most exceptional of circumstances.

¹⁵ Article 69(1), FEFTA; Article 10, Cabinet Order; and Article 10, Ministerial Order.

¹⁶ Article 29, Bank of Japan Act, Act No. 89 of June 18, 1997.

¹⁷ Article 55-8, FEFTA; Article 6-5, Cabinet Order; and Article 7(1), Ministerial Order.

¹⁸ Note that, submitting a filing on Form 1 does not preclude the investor from later deciding not to close the

As discussed further below, in certain cases a foreign investor may be eligible for an exemption from the Pre-Closing FDI Notification Requirement. Applicability of the exemption may result in a full exemption from both the Form 1 filing as well as the Completion Report. In certain cases, the exemption may be in part, where a simple completion report after closing will still be required. In such case, the post-closing report under exemption should be filed using Form 11-2 (“**Post-Closing FDI Report Under Exemption**”).

(b) Post-Closing FDI Report for Acquisitions in Non-Designated Business Industries

For acquisitions of companies not engaged in a Designated Business, the usual post-closing report on Form 11 (“**Post-Closing FDI Report for Non-Designated Business**”) will be required where a foreign investor acquires 10% or more of the Japanese company’s shares or voting rights.

3 Determining FDI Filing Obligations of Foreign Investors

3.1 Overview

The key factors to be examined in determining whether a Pre-Closing FDI Notification applies to a foreign investor’s contemplated acquisition of shares in a Japanese company are as follows:

- Whether the target is engaged in a Designated Business
- The stake that the foreign investor intends to acquire in the target
- Whether the target is privately held or listed on a Japanese stock exchange
- If the transaction qualifies for an FDI filing, whether the foreign investor is eligible for an exemption.

A Pre-Closing FDI Notification applies only to acquisitions by foreign investors¹⁹ of Japanese companies engaged in Designated Businesses. For a current list of Designated Businesses, see [Annex 1](#).

transaction (for example, due to conditions precedent to closing under the transaction agreement not being satisfied) even if the transaction is cleared by the Japanese government to proceed. Where the transaction does not close, a Completion Report is not required.

¹⁹ Under the new FDI regime, the possibility of avoiding a Pre-Closing FDI Notification by setting up a Japanese special purpose vehicle to act as the acquisition entity (“**SPV**”) is all but foreclosed. Under the “old normal” a foreign investor or its first or second tier Japanese subsidiary would be equally considered a foreign investor for the purposes of the FEFTA. The new rules broaden the concept further so that regardless of how many companies are added in between the foreign investor and the SPV, the SPV could still be considered a “foreign investor” for the purposes of the FEFTA if there is an ultimate non-resident entity who holds 50% or more of the SPV’s voting rights in aggregate directly or indirectly through all the tiers of its Japanese subsidiaries (Article 26(1)-3, FEFTA; Article 2(1), Cabinet Order). Under Japanese company law, a corporation is a “subsidiary” of another party where such other party holds 50% or more of its voting rights or is otherwise under the control of such other party with respect to decision-making on financial or business

The acquisition thresholds triggering a Pre-Closing FDI Notification and the requirements to be eligible for an exemption largely depend on whether the Japanese target is a privately held company or a company whose shares are listed on a Japanese stock exchange. There is much less room for avoiding a Pre-Closing FDI Notification when acquiring a privately held Japanese target engaged in a Designated Business. It should also be noted that exemptions from the Pre-Closing FDI Notification are not available to state-owned enterprises²⁰, investors who have a record of violating the FEFTA²¹ or those with certain aims²² (collectively, “**Ineligible Persons**”).

The following examines the analysis for acquisitions of: (1) privately held companies; and (2) companies listed on a Japanese stock Exchange question and answer format.

3.2 Privately-Held Target Companies

Is the target company engaged in a Designated Business?

If yes, a Pre-Closing FDI Notification will be required.

Is there any exemption for minority shareholdings?

Even if the foreign investor will acquire only one share of a privately held Japanese company engaged in a Designated Business, a Pre-Closing FDI Notification obligation would be triggered.²³ As a result, this can impact investments such as the following:

- a joint venture with a Japanese joint venture partner who will be the majority shareholder;

matters.

²⁰ It is noteworthy that the Japanese government has carved out special treatment for sovereign wealth funds and public pension funds (“**Public Investment Funds**”). Public Investment Funds can be eligible for an exemption from the Pre-Closing FDI Notification where determined not to be a threat to national security and where accredited by the Japanese government for the exemption. Such accredited Public Investment Funds will also need to execute a confidential memorandum of understanding with Japan’s Minister of Finance.

²¹ Article 27-2(1), FEFTA, Article 3-2(1), Cabinet Order.

²² Aim to, among others, (i) having itself or its related person be “newly” appointed as a member of board of directors or corporate auditor of the target company (or any of its certain affiliates) that engages in any Designated Business, (ii) proposing a divestiture of any Designated Business to a general meeting of shareholders of the target company, (iii) acquiring non-public information concerning the target’s technology in the Designated Business or any other action that may lead to leakage of such information, or (iv) “conducting acts that make it difficult (for the investee company) to implement the Designated Business continuously and stably”.

²³ Article 26(2)-1, 27(1), FEFTA.

- investment in a Japanese start-up where the foreign investor will be merely one investor with a small stake among many investors.

Is there any other exemption available for a foreign investor who desires to avoid a Pre-Closing FDI Notification for the contemplated acquisition?

If the Designated Business that the Japanese company is engaged in is not a Core Business, an exemption may apply. This exemption requires the foreign investor to refrain from participating in the business of the target company with respect to specific actions as outlined in [Annex 2](#) (“Restrictions”). The actions covered under the Restrictions are among those actions of a foreign investor that are subject to scrutiny under the FEFTA as having the potential to “materially impact the operations of the company”.²⁴ From a practical perspective, for acquisitions of privately held companies, these restrictions are likely to be viewed by foreign investors as too limiting to merit consideration.

3.3 Companies Listed on a Japanese Stock Exchange

How large of a stake will the foreign investor acquire in the target company?

If the stake to be acquired is below 1% of the shares or voting rights of the listed target company, no FDI filing will be required regardless of whether the target company is engaged in a Designated Business.

If the stake to be acquired is 1% or more, the analysis must continue to the next questions.

Is the target company engaged in a Designated Business?

If the foreign acquirer will acquire 1% or more of the shares of a listed target company that is engaged in a Designated Business, the default rule is that a Pre-Closing FDI Notification will be required.²⁵ An exemption may be available depending on a number of factors, beginning with whether the foreign investor is a “Financial Institution”.²⁶

²⁴ Incorporated into the concept of “Inward Direct Investment, Etc.” under Article 26(2) of the FEFTA, with further details as provided in the relevant provisions of the Cabinet Order and announcements made by the Minister of Finance.

²⁵ Article 26(2)-3, 27(1) FEFTA

²⁶ This generally refers to an organization that is subject to financial regulation in Japan or other jurisdiction in which the organization engages business. (Article 27-2,(1) FEFTA; Article 3-2(2)-3, Cabinet Order; and Article 3-2 (4), Ministerial Order.)

Is the foreign investor eligible for an exemption?

Financial Institutions	Non-Financial Institutions
<p><i>Will the foreign investor undertake the Restrictions?</i></p> <p>If yes, the foreign investor will be exempted from the Pre-Closing FDI Notification except that, if the foreign investor shall acquire a stake or voting rights of 10% or more in the target company, the foreign investor will still be expected to file the Post-Closing FDI Report Under Exemption after closing.</p>	<p><i>Will the foreign investor undertake the Restrictions?</i></p> <p>If yes, the foreign investor will be exempted from the Pre-Closing FDI Notification subject to the following:</p> <ul style="list-style-type: none"> • If the Designated Business in which target company is engaged qualifies as a Core Business, the foreign investor must accept the added Restrictions applicable to acquisitions of Core Business by non-Financial Institutions. • Even if the foreign investor undertakes all the Restrictions, no exemption will be available if the foreign investor intends to acquire a stake or voting rights of 10% or more of the outstanding shares of a target company engaging in a Core Business.
	<ul style="list-style-type: none"> • Even where the foreign investor is eligible for an exemption, if the foreign investor shall acquire a stake or voting rights of 1% or more in the target company, the foreign investor will still be expected to file Post-Closing FDI Report Under Exemption after closing.²⁷

[Figure 1A](#) provides a flow chart analysis for foreign investors qualifying as Financial Institutions.

[Figure 1B](#) provides the analysis for general foreign investors not qualifying as Financial Institutions.

²⁷ Subsequent acquisitions of additional shares in the same target by the exempted foreign investor can also trigger the obligation to submit additional Completion Reports Under Exemption; specifically, after the foreign investor's stake reaches 3% for the first time and then 10% or more.

4 FEFTA in the Planning of a Japan M&A

4.1 Information Gathering; Strategy

Particularly during the very early stages of planning a transaction before the prospective purchaser is given access to the company's information, it may not always be easy to determine whether all or a part of a potential target's business activities are in a Designated Business. Under such circumstances, the prospective purchaser may need to enlist the assistance of its local advisors to conduct information searches as well as careful consultations with the Bank of Japan and Ministers responsible for the relevant business sectors on a no-name basis in order to gain some clarity²⁸.

Where it is likely that a Pre-Notification FDI Notification applies, another issue to consider is whether it is worthwhile to seek an exemption if one is available.

4.2 Deadlines/Necessary Lead time

Transactions Requiring a Pre-Closing FDI Notification

Where a Pre-Closing FDI Notification applies, but the foreign investor intends to seek an exemption, some lead time will be needed for the analysis of the exemption requirements and discussions with the Japanese government on the exemption if necessary.²⁹

If a Pre-Closing FDI Notification will be submitted, lead time will need to be factored into the transaction schedule in consideration of the mandatory waiting period as described below.

- *Generally 30-days.* As a general rule, where a Pre-Closing Notification is required, a 30-day waiting period applies from the date of the Form 1 filing.
- *Possibility of shortened waiting period of two weeks only.* For simple cases not requiring scrutiny, the Bank of Japan has been given authority to provide filers with a notification of acceptance within a shortened period, as early as two weeks after the filing of Form 1.³⁰

²⁸ "List of classifications of listed companies regarding the prior-notification requirements on inward direct investment under the Foreign Exchange and Foreign Trade Act" (Updated on July 10, 2020)
https://www.mof.go.jp/international_policy/gaitame_kawase/fdi/list.xlsx

²⁹ At this time, the specific formalities that will be required by the Japanese government to confirm the foreign investor's commitment to the Restrictions prior to granting clearance for a pre-closing FDI notification remain unclear.

³⁰ Article 69(1), FEFTA; Article 10 item (ii), Cabinet Order; Article 10 item ii, Ministerial Order.

- *Possibility of extended waiting period.* For the acquisitions of a target engaged in a Designated Business, the government may extend the waiting period to up to five months from the date of the Form 1 filing where the government deems that the contemplated transaction warrants particular scrutiny for its potential impact on national security or the Japanese economy.

The Completion Report or if applicable, the Post-Closing FDI Report Under Exemption is due within 45 days after the closing of the transaction.³¹

Transactions Not Requiring a Pre-Closing FDI Notification

The deadline for the Post-Closing FDI Report for Non-Designated Businesses is also 45 days after the closing of the transaction.³²

4.3 Transaction Documentation

While FDI filing obligations fall on the foreign acquirer, it may be helpful to have the assistance of the Japanese target in case of follow up questions or requests for information from the Japanese government regarding the target company business. Where feasible, it may be advisable for the prospective purchaser to negotiate a clause in the transaction agreement for the sellers of the target company to procure the target's cooperation with such inquiries.

Under the new FDI regime the Japanese government will have the power to unwind a foreign acquirer's acquisition of a Japanese company engaging in a Designated Business in the event a transaction proceeds without the Japanese government's clearance pursuant to a Pre-Closing FDI Notification. Sanctions for violating the FEFTA are also possible. Accordingly, it would be prudent to include FEFTA clearance as among the purchaser's conditions precedent to closing in the transaction document.

4.4 Other Issues to be Coordinated

It is important not to forget that FDI filing obligations are only one of the many regulatory issues that may need to be considered in connection with an acquisition in Japan. Depending on the target's business, industry circumstances and any changes contemplated by the prospective acquirer in the post-acquisition integration phase, some other considerations that should be examined in parallel with the FDI analysis may include:

³¹ Article 7(1), Ministerial Order. Prior to the recent amendments, the deadline was the 15th of the month following the month of the closing.

³² Article 6-2(1), Ministerial Order. Prior to the recent amendments, the deadline was the 15th of the month following the month of the closing.

- Merger control filings
- Impact on regulatory permits; licenses
- Where the target company is a recipient of government subsidies, impact on such subsidies
- In the case of listed company acquisitions, Japanese securities laws³³ and stock exchange rules

5 Impact on Japan M&A Going Forward

Much concern has been expressed regarding the potential impact of the new FDI regime on Japan M&A, and in particular capital raising for Japanese startups. The Japanese government has insisted that its policy continues to be to promote foreign investment in Japan (although with the caveats regarding matters of national security and the “smooth” operation of the Japanese economy).

Ultimately, it has yet to be seen how FDI in Japan will be impacted by the new rules. We will closely monitor enforcement under the FDI regime and report on the trends in a future newsletter.

* * *

If you have any questions about the above or any questions about M&A in Japan generally, please do not hesitate to contact the listed authors.

³³ In particular, Large Shareholding Report rules should be examined and properly complied with where applicable.

Annex 1. List of Designated Businesses and Core Businesses

- ✓ Weapons
 - ✓ Aircraft
 - ✓ Nuclear facilities
 - ✓ Space
 - ✓ Dual-use technologies
- Among Designated Business industries, these are considered particularly sensitive (Core Businesses) subject to special scrutiny. (See information on Restrictions.)
- ✓ Cybersecurity
 - ✓ Electricity
 - ✓ Gas
 - ✓ Telecommunications
 - ✓ Water supply
 - ✓ Railway
 - ✓ Oil
- Among Designated Business industries, these can also be considered Core Businesses in certain cases.
- ✓ Heat supply
 - ✓ Broadcasting
 - ✓ Public transportation
 - ✓ Biological chemicals
 - ✓ Security services
 - ✓ Agriculture, Forestry and Fisheries
 - ✓ Leather manufacture
 - ✓ Air transportation
 - ✓ Maritime transportation

Annex 2. Restrictions

A foreign investor (other than Ineligible Persons) may be eligible for an exemption from a Pre-Closing FDI Notification if the foreign investor is willing to undertake the following restrictions on its participation in the business of the target Japanese company.

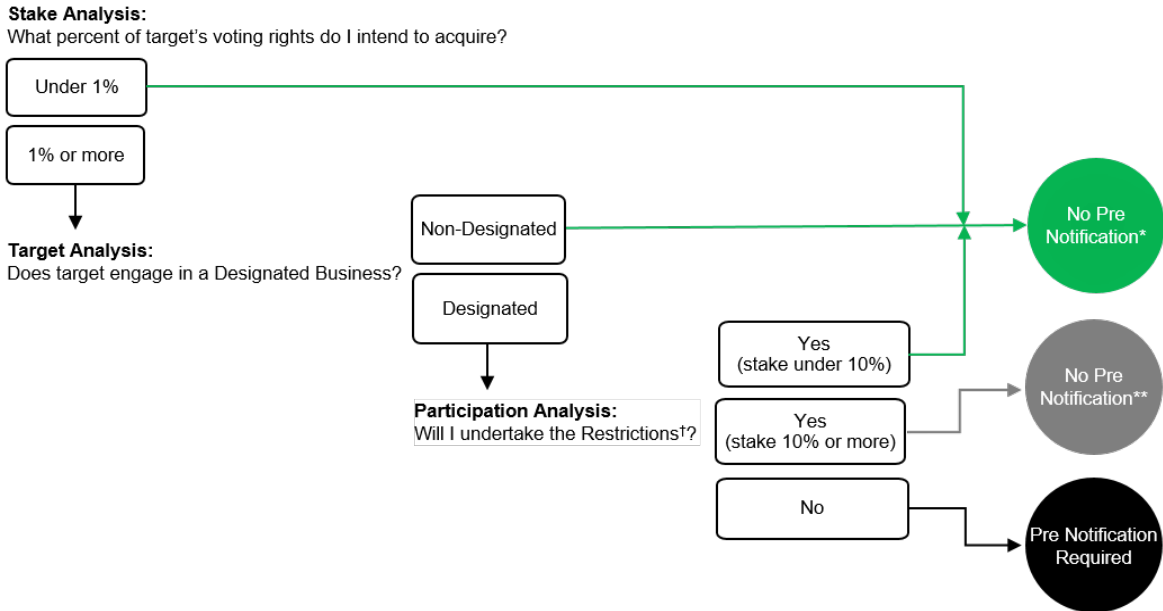
- Neither the foreign investor, nor its related persons shall become board members or statutory auditors (*kansayaku*) of the target.
- The foreign investor shall not make shareholder proposals for the divestiture of functions or assets in the Designated Business in whole or in part.
- The foreign investor shall not access non-public information concerning the target's technology in the Designated Business (for example through inquiries to company executives), propose any disclosure of such information or request any changes to the target's internal rules concerning the control of such information.

Additionally, if the foreign investor is not a Financial Institution and the target's Designated Business qualifies as a Core Business, such foreign investor must also abide by the following additional requirements in order to be considered for an exemption.

- The foreign investor shall not attend any meetings of the target's executive board/committees where decision-making concerning Core Business activities is discussed.
- The foreign investor shall not submit any written recommendations regarding Core Business activities to any of the target's executive board/committees requiring action or response within a specific timeframe.

Figure 1A.

Acquisition of Listed Company Shares by Foreign Investors Qualifying as Financial Institutions

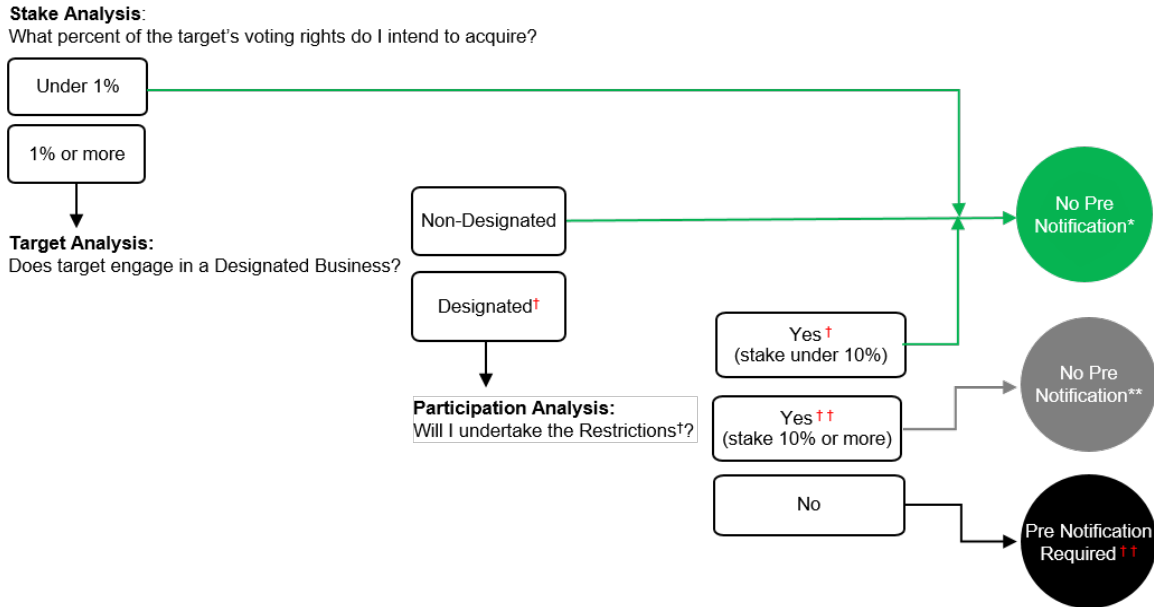


* Note that even if the target is not engaged in a Designated Business, the usual Post-Closing FDI Report for Non-Designated Businesses may still be required if the stake acquired in the target is 10% or more of the shares.

** The Form 19 Completion Report will still be required after closing.

Figure 1B.

Acquisition of Listed Company Shares by Foreign Investors Not Qualifying as Financial Institutions



* Note that even if the target is not engaged in a Designated Business, the usual Post-Closing FDI Report for Non-Designated Businesses may still be required if the stake acquired in the target is 10% or more of the shares.

** The Form 19 Completion Report will still be required after closing.

† Even among Designated Businesses those qualifying as “Core Businesses” are considered particularly sensitive. In order to qualify for an exemption from the Pre-Closing FDI Notification requirement, foreign investors who are not Financial Institutions are required to accept added Restrictions where the target is engaged in a Core Business. However, as set forth below even this may not be sufficient for avoiding a Pre-Closing FDI Notification where the target is engaging in a Core Business.

†† Note that for foreign investors who are not Financial Institutions, a Pre-Closing FDI Notification will be required whether or not the investor undertakes the added Restrictions, if the stake the investor intends to acquire in a target engaging in a Core Business is 10% or more.

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