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# AMT/NEWSLETTER

## Economic Security & International Trade

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### **Amendments to Ministerial Ordinance on Foreign Direct Investment, and Strengthening of Prior Notification and Post Reporting Obligations for Foreign Financial Institutions**

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## **1. Introduction**

On April 4, 2025, the "Revision of Cabinet Order for Partial Revision of Cabinet Order for Foreign Direct Investment, etc." and its related ministerial ordinances and public notices were announced (collectively, "Revised Ministerial Order"), which went into effect on May 19, 2025. The important points of the Amendments are the introduction of the concept of "Type A investors" and "Type B

investors" with respect to the prior notification exemption system for the acquisition of listed shares and/or voting rights, and the expansion of the scope of application of change reports.<sup>1</sup> The Revised Ministerial Order and the public consultation on the draft rules and regulations of the Foreign Exchange and Foreign Trade Act by the Ministry of Finance ("Public Consultation Response") have clarified the scope of application, which had previously been open to broad interpretation. This article explains the Revised Ministerial Ordinance, focusing on the clarified scope of application.

The Revised Ministerial Order may have a broad impact on foreign financial institutions. Foreign financial institutions that invest in Japanese equities using the prior notification exemption system in the future should conduct periodic reviews of matters related to their attributes and confirm whether prior notification will be required for future transactions, even for types of transactions that did not previously require such notification. Particular attention should be paid in practice to the change report described below, as it is necessary to determine whether or not a change report is required with respect to changes to its owner and decision-making process, regardless of the country in which the foreign financial institution is located.

## 2. Clarification of regulatory objectives

The purpose of the Revised Ministerial Order is the strengthening of surveillance over the collection of intelligence by foreign governments.<sup>2</sup> In China, the obligation to cooperate in intelligence gathering activities is imposed under Article 7 of the "National Intelligence Law" of the People's Republic of China. It is understood that not only foreign investors directly subject to National Intelligence Law, but also those involved as shareholders or directors who are subject to the Law may be considered as Type A investors or Type B investors. Foreign investors are required to screen the owners and decision makers of their investments to determine whether they are required to file a prior notification and whether they are eligible to use the prior notification exemption system.

In addition, the language in the definition of Type A investors, specifically the "obligation to cooperate with intelligence gathering activities by foreign governments, etc." had previously been open to extensive interpretation as to what kind of obligation this refers to.<sup>3</sup>

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<sup>1</sup> Regarding the revision of this ministerial ordinance, an overview has already been presented on "Review of the Prior Notification Exemption System under the Inward Direct Investment Screening System under the Foreign Exchange and Foreign Trade Act", Taku Matsumoto / Jun Suzuki / Ryusuke Bushimata / Ryu Sato (2025/03/10)

〈[https://www.amt-law.com/asset/pdf/bulletins5\\_pdf/250331.pdf](https://www.amt-law.com/asset/pdf/bulletins5_pdf/250331.pdf)〉

<sup>2</sup> See Yuji Nakamura et al., "Recent Status of the Inward Investment Screening System under the Foreign Exchange and Foreign Trade Act: Recent Revision of Government Ordinances and Issuance of Manual Report" (Ministry of Finance, Public Relations Magazine, The Finance 2025, April 2025, No. 713, 2025), pp. 31~32 (in Japanese)

〈[https://www.mof.go.jp/public\\_relations/finance/denshi/202504/index.html#page=35](https://www.mof.go.jp/public_relations/finance/denshi/202504/index.html#page=35)〉

<sup>3</sup> See note 1 above

The Revised Ministerial Order has clarified that the regulatory purpose is to strengthen surveillance over intelligence gathering activities and, accordingly, the obligation to provide information relating to financial inspections, tax investigations, investigations by labor regulatory authorities, and criminal investigations, etc., is not included in this definition, limiting its scope of application (see Public Consultation Response<sup>4</sup> QA7, 17<sup>5</sup> ).

### 3. Clarification of "Type A investors" and "Type B investors"

#### 3.1. Type A investors (Article 3-2, Paragraph 1, Item 4 of the revised Cabinet Order on Foreign Direct Investment ("the Order"))

Prior to the Revised Ministerial Order, prior notification was required when a foreign government or its related party acquires 1% or more of the shares of a listed company operating in a designated business sector when the following (x), (a), and (b) are met (Article 3-2, Paragraph 1, Items 3, 4, and 5 of the Order before the revision).

- (x) Foreign governments and government agencies ("**foreign governments, etc.**")
- (a) Related organizations of (x)
- (b) an officer of (x) or (a)

According to the Revised Ministerial Order, those who are obligated to cooperate in information gathering for foreign governments are to be treated the same as foreign governments, etc., and therefore, paragraph (y) (below) has been newly added (Article 3-2, Paragraph 1, Item 4 of the Order). Paragraphs (x), (y), (a), and (b) are collectively referred to as "**State-Owned Enterprises, etc.**".

- (y) Organizations or individuals that are obligated to cooperate in information gathering activities by foreign governments, etc., based on contracts with foreign governments, etc., or foreign laws and regulations. However, this excludes cases where the collection of information that is highly likely to cause damage to national security has been excluded in such information collection (Article 3-2, Paragraph 1, Item 4 of the Direct Investment Order).

The scope of (a) is also expanded as follows (Article 3-2(1)(v)(a)-(e) of the revised Order):

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<sup>4</sup> Ministry of Finance, International Bureau, "Results of the Public Consultation regarding the Amendment to the Cabinet Order on Inward Direct Investment, etc." (Ministry of Finance, April 4, 2025)  
< <https://public-comment.e-gov.go.jp/pcm/1040?CLASSNAME=PCM1040&id=395122504&Mode=1> >  
(in Japanese)

<sup>5</sup> Ministry of Finance, International Bureau, "Q&A on the Amendment to the Cabinet Order on Inward Direct Investment, etc. " (Ministry of Finance, April 4, 2025)  
< [https://www.mof.go.jp/policy/international\\_policy/gaitame\\_kawase/press\\_release/relateddocument\\_20250404\\_1.pdf](https://www.mof.go.jp/policy/international_policy/gaitame_kawase/press_release/relateddocument_20250404_1.pdf) > (in Japanese)

- ① Organizations in which 50% or more of the voting rights are held directly or indirectly by (x) or (y)
- ② Organizations in which (x) or (y) holds veto shares (golden shares)
- ③ Organizations in which (x), (y), or ① directly or indirectly accounts for 50% or more of the shares or investments
- ④ Organizations in which more than 1/3 of the directors or officers, who has the authority to represent the organization, falls under the following;
  - P) (x) or (y) has appointed or nominated such directors or officers
  - Q) any officer, employee or other staff member of (x) or (y).
  - R) (y) (provided, only individuals)

P), Q) and R) are referred to as "**Foreign Government Officials**".
- ⑤ An organization that receives directions from (x) or (y)

(The scope of (b) is expanded to "an officer of (x), (y) or (a)". See the glossary at the end of this article for reference)

Particular attention is required for foreign financial institutions. Previously, passive investments in listed companies were permitted to use the blanket exemption as part of the prior notification exemption system. However, after the Revised Ministerial Ordinance, clarification has been made that even foreign financial institutions are prohibited from using this system if they fall under Type A investors, and only limited use is permitted if they fall under Type B investors (see Public Consultation Response QA9). In addition, the existence of an employee who bears the obligation to cooperate in information collection does not constitute a foreign investor (see Public Consultation Response QA16).

### 3.2. Those similar to Type A investors ("Type B investors") (Article 3-2, Paragraph 4, Items 1-3 of the Order)

With regard to Type B investors, the prior notification exemption system cannot be used for investments in Designated Core Business Entities (defined (3) below), meaning prior notification is required. Furthermore, the most stringent exemption criteria are imposed for investments in companies engaged in core business sectors that are not Designated Core Business Entities. On the other hand, for designated business sectors other than core business sectors, prior notification is exempted by complying with the exemption criteria, same as before the revision.

- G) (y) is deemed to have substantial decision-making control.
- H) Persons who are effectively headquartered in a country or region other than the country of establishment, and who are affected by the laws and regulations of that country regarding information collection activities.
- I) Persons obligated to disclose information to cooperate with the information gathering activities of foreign governments, etc., by entering into an agreement

with (x), (a), and (b), or a renewed agreement (including renewed and subsequent contracts) with such foreign governments etc.

Foreign financial institutions may also fall under the category of Type B investors (See Public Consultation Response QA9). In addition, the criteria for determining "substantial decision-making" in G) is understood to be the same as the interpretation of "substantial decisions are made regarding the financial and operating or business policies of the foreign financial institution" in Article 10-5, Paragraph 8, Item 7 of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties (Act No. 46 of 1969, as amended). However, it is said that the decision will be made comprehensively in accordance with the specific circumstances of each case, together with other considerations (See Public Consultation Response QA31 and QA50).

### 3.3. Designated Core Business Entities (Article 3-2, Paragraph 5 of the Order)

The newly established "**Designated Core Business Entities**" are those that operate businesses in certain industries (i.e. core business sectors) and are considered to be Specified Essential Infrastructure Service Providers, as defined in Article 50, Paragraph 1 of the Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measure, (Act No. 43 of May 18, 2022, as amended). Based on the so-called list of stocks<sup>6</sup> issued by the Ministry of Finance, companies engaging in critical infrastructure-related businesses are designated as such.

## 4. Expansion of the scope of application of change reports (Article 7, Paragraph 4 of the Order)

Foreign investors using the prior notification exemption system are required to submit a change report (Form 19-2) within 45 days from the date of the change. This system was newly introduced when the prior notification exemption system was established in 2019, and now the Revised Ministerial Order has significantly expanded the scope of the reporting grounds.<sup>7</sup>

1. Change in specified shareholders
2. Addition of state-owned enterprises, etc. as specified shareholders★
3. Addition of Type B investors as Specified Shareholders★
4. Change in nationality composition (1/3 or more) of officers or those with authority to represent the company
5. Appointment of foreign government officials as directors★
6. Change in ultimate parent company, etc.

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<sup>6</sup> The list of stocks is posted on the following website of the Ministry of Finance.  
[https://www.mof.go.jp/policy/international\\_policy/gaitame\\_kawase/fdi/index.htm](https://www.mof.go.jp/policy/international_policy/gaitame_kawase/fdi/index.htm)

<sup>7</sup> See the end of the linked pages below for the revised change report form.  
<https://www.boj.or.jp/about/services/tame/t-down.htm>

7. When the reporting party is a state-owned enterprise, etc.★
8. When the reporting person is a Type B investor★
9. When newly or no longer becoming applicable as a foreign financial institution
10. When newly or no longer operating business in investment banking
11. Changes in the Supervisory Administrative Agencies of foreign financial institutions
12. Changes in laws and regulations pertaining to the classification of Licensing, etc. of foreign financial institutions)

(Items with ★ are newly established or amended reporting grounds)

A shareholder or investor of a reporting person who directly or indirectly holds 10% or more of the shares, investments, or voting rights of the reporting person is referred to as a **"Specified Shareholder"**.

## 5. Conclusion

Five years have passed since the Foreign Exchange and Foreign Trade Act was amended in 2019 and took effect in 2020. During that time, the prior notification exemption system has been the focus of attention in many M&A cases and alliances, and has been extensively discussed in the national diet as well as by the general public, regarding its handling of risks to national security. In addition, there has been a global trend toward strengthening economic security, such as by the strengthening of the enforcement of the Committee on Foreign Investment in the United States (CFIUS). The Revised Ministerial Order is considered to be in line with this current trend.

In Japan, as can be seen in the Revised Ministerial Order, there is a trend to strengthen enforcement against foreign financial institutions. For example, a case worth mentioning is that of August 2024, regarding an operation that would have allowed the use of the blanket exemption when the general partner (GP) of a partnership-style investment fund is a foreign financial institution, but which was suddenly denied by the Bank of Japan's response in a Q&A.<sup>8</sup> In the backdrop of this global trend toward stronger enforcement, the key issue is legal stability. For example, it has long been the case that foreign investors themselves were required to determine whether they apply as foreign investors (see Public Consultation Response QA47). Clarification has been made that the determination of whether a foreign investor falls under Type A investor or Type B investor is also to be made by the foreign investor itself (see Public Consultation Response QA27). That being said, even if the attributes of a foreign investor change

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<sup>8</sup> Revision of Foreign Exchange and Foreign Trade Act-Related Notification Concerning Addition of Core Industry for Supply Chain Protection, etc. and Clarification of Interpretation of Foreign Partnership (Foreign Direct Investment-Related), Taku Matsumoto / Ryusuke Bushimata (2024/09/05) (in Japanese) <[https://www.amt-law.com/asset/pdf/bulletins5\\_pdf/240828.pdf](https://www.amt-law.com/asset/pdf/bulletins5_pdf/240828.pdf)>

and such investor is newly classified as a Type A investor or a Type B investor, the prior notification obligation is not retroactive to investments made prior to the effective date of the Revised Ministerial Ordinance (See Public Consultation Response QA25).

Nevertheless, in the course of the Public Consultation Response, practical concerns in relation to various jurisdictions (e.g., Singapore, Hong Kong, China, Cayman Islands, Isle of Man. See Public Consultation Response QA3, 13, 14, and 18) have been raised. We look forward to specific clarifications from the Ministry of Finance as to how these concerns will be handled. We will continue to monitor the regulatory developments and provide updates on our analyses of these changes as they progress.

End

## 【Glossary】

<b>Foreign Government etc.</b>	Foreign governments and government agencies
<b>Foreign Government Officials</b>	P), Q), R)
<b>State-owned enterprises, etc.</b>	(x), (y), (a), (b)
<b>Type A investors</b>	(y)
<b>Type B investors</b>	G), H), I)
<b>Holder of specified stock certificates</b>	Shareholders or investors of the reporting person who directly or indirectly hold 10% or more of the shares, investments, or voting rights of the reporting person

\*The symbols used in the above glossary are used in this article for convenience only, and are not used in the official documents issued by the Ministry of Finance.

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