JAPAN RESTRICTS FOREIGN INVESTMENTS IN TECHNOLOGIES AMID NATIONAL SECURITY CONCERNS

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Corporate, Investment Management and International Trade Alert

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The Japanese government recently announced amendments (the Amendments) to certain regulations under *Japan's Foreign Exchange and Foreign Trade Act* (Act No. 228 of 1949, as amended) (FEFTA) expanding the scope of industries for which governmental review of prior investments by a non-Japanese investor will be required. The objectives of the Amendments are to prevent and control technology transfers that may be harmful to Japanese national security and ensure domestic capabilities in information technology-related manufacturing, software, and communication industries.[1]

WHICH ADDITIONAL INDUSTRIES?

The following business categories have been added to the prior notification requirement.

Information processing-related appliances or parts manufacturing

- Integrated circuits manufacturing
- Semiconductor memory media manufacturing
- Optical disk, magnetic disk, and magnetic tape manufacturing
- Electronic circuit board production
- Wired communication equipment manufacturing
- Mobile phone/PHS phone manufacturing
- Computer manufacturing
- Personal computer manufacturing
- External storage device manufacturing

Information processing-related software production

- Contract development software business
- Embedded software business
- Package software business

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Information communication services (limited to those requiring registration under Article 9 of the Telecommunications Business Act)

- Local telephone communication services
- Long-distance telecommunication services
- Wired broadcasting telephone services
- Other fixed telecommunication services
- Mobile telecommunication services
- Information processing services
- Internet use support business

WHAT DOES THIS MEAN?

Under the FEFTA, a transaction that falls under an inwards direct investment or specified acquisition concerning any of these businesses or industries added under the Amendments will require a prior notification to the Ministry of Finance and other relevant government agencies via the Bank of Japan.
Further, foreign investors are not permitted to complete the proposed transaction unless approved. Foreign investors should plan ahead and make sure that the transaction schedule includes time to satisfy the FEFTA requirements. Transactions, which fail to be notified or have been completed before an approval is given, could be subject to a cease and desist order of the Japanese government.

WHEN WILL THIS HAPPEN?

Although the Amendments came into force on August 1, 2019, the Amendments provide a grace period if:

- a foreign investor intends to undertake an inward direct investment or specified acquisition in the types of businesses added by the Amendments on or before August 30, 2019, it is generally not required to submit a prior notification; or
- a foreign investor intends to undertake an inward direct investment or specified acquisition in these businesses on and after August 31, 2019, it is required to submit a prior notification on or after August 1, 2019.

[1] See joint press release describing the scope of expanded review in light of the growing national security concerns, in particular cybersecurity, https://www.meti.go.jp/english/press/2019/0527_001.html.

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