11th March 2025

To,

Foreign Investment Policy and Review Office,
Foreign Transactions Policy and Management Division,
International Bureau,
Ministry of Finance,
Japan 3-1-1 Kasumigaseki, Chiyoda-ku,
Tokyo, Japan 100 – 8940.

Dear Sir or Madam,

Public consultation on the draft rules and regulations of the Foreign Exchange and Foreign Trade Act

We thank you for the opportunity to comment on the draft amendments relating to Japan's Foreign Exchange and Foreign Trade Act (FEFTA). We appreciate the objective of these amendments to protect national security. The Act has undergone significant evolution since its major revision in November 2019. As documented in ACGA's previous open letters from October 2019, November 2019 and April 2020, there have been on-going concerns essentially regarding the implementation of FEFTA's requirements.

The Ministry of Finance (MOF) has acknowledged these concerns, and we appreciate the effort to strike a balance between receiving beneficial foreign investment and protecting Japan's national security interests. With regard to the proposed amendments on inbound FDI, ACGA would like to highlight some potential issues and concerns as well as to put forward some recommendations.

Potential issues and concerns

1) **Japan has a low threshold compared to other countries**: Japan's approach to strengthening its FDI screening mechanism aligns with global trends. The European Union is currently revising its FDI Screening Regulation to enhance harmonization across member states and address evolving security challenges. However, the foreign investment screening in Japan at 1% is a significantly lower threshold than corresponding levels in other countries. This lower threshold, combined with the new investor categories, would likely subject a much bigger range of investments to screening compared to other jurisdictions, resulting in significant compliance and reporting burdens for the relevant asset managers and asset owners who are classified as Type A or Type B, including asset managers who may be investing on their behalf.

provisional

Summary of inward FDI screening systems in each country

		US	UK	France	Germany	Italy	Canada	Japan
Mandatory pre-screening	Thresholds	No numerical thresholds (Limited to transactions involving the acquisition of control or sensitive information)	25%	10%	10% / 20%	3% / 10%	33% (for companies above a certain size)	1%
Mandatory pre-screening	Sectors subject to review	Designated sectors (Limited to critical technology, infrastructure and data-related)	Designated sectors	Designated sectors	Designated sectors	Designated sectors	All	Designated sectors
corrective intervention		Review, divestiture orders etc. are possible even if they are not subject to mandatory pre-screening	Review, divestiture orders etc. are possible even if they are not subject to mandatory pre-screening	Divestiture orders etc. are possible for cases subject to mandatory pre-screening	Review, divestiture orders etc. are possible when acquiring more than 25% of shares even if they are not subject to mandatory pre-screening	Divestiture orders etc. are possible for cases subject to mandatory pre-screening	Review, divestiture orders etc. are possible even if they are not subject to mandatory pre-screening	Even if they are not subject to mandatory pre-screening, if investors who use prior notification exemption fail to comply with exemption conditions, divestiture orders etc. are possible
Number of mandatory pre-screenings		440	671	131	257	608	5	2,871

(note 1) Prepared based on the published data of each country. Thresholds and other information in the mandatory pre-screening row are for listed companies. The number of mandatory pre-screenings is based on the most recent published data at the time of writing for each country. (Japan, Apr 2023-Mar 2024; US, France and Italy, Jan-Dec 2022; UK, Apr 2022-Mar 2023; Germany, Jan-Dec 2023.)
(note 2) For US, the 440 cases include the number of voluntary filings.
(note 3) For Canada, the number of applications subject to net benefit review is five. In addition, there were 1,005 notifications which can be provided up to 30 days after the investment has been made.
(note 4) For Japan, there is a prior notification exemption system (blanket exemption for foreign financial institutions (regardless of acquisition ratio); general exemption for general investors (acquisition ratio: 1%-10%)).

Source: Ministry of Finance, Japan[1]

2) **Practically all sovereign funds will have to report to determine their status**. With reference to illustrative diagram in material released, ahead of potential acquisition of greater than 1% interest in a business that might be classified as a national security asset, practically all sovereign wealth funds (SWFs) investing in Japan will need to determine whether they will be classified as a Type A investor. This will lengthen the investment pre-planning period and also will be an ongoing process with portfolio changes. This will also impact all external managers where SWFs have significant allocations.

3) **Increased cost of investment in Japanese equities**. The introduction of new investor categories and additional exemption conditions may complicate investors' ability to predict whether their investments will require prior notification. The amendments would likely increase the administrative burden for both investors and Japanese authorities. It would quite likely add to compliance costs and create uncertainty for foreign investors considering investments in Japan. Some investors may deem the uncertainty critical enough to be more selective in evaluating Japanese investments, to justify additional compliance consideration and costs.

4) **Increased uncertainty on corporate governance mechanism.** These provisions could potentially impact Type A/B investors (and those investing on their behalf) on their reporting requirements

[1] https://www.mof.go.jp/english/policy/international_policy/fdi/Data/annual_report2023_en.pdf

after initially being given exemption: for instance, when they have new clients who may be seen as Type A/B and where these clients might wish to have voting rights for their investments, there will likely be uncertainty about whether there is need to self-report as a result of the new clients. These uncertainties could lead these asset managers either not to take on certain clients or not to invest in Japan, given that new Type A/B clients may result in changing the firm's portfolios for existing clients in those funds.

5) **Uncertainty in implementation if the status of a portfolio manager changes.** A portfolio manager may initially not be classified as Type A/B, but because the regulations may change in the jurisdiction it operates or the type of clients that it manages for, its status in Japan may also subsequently change. It is unclear whether there will be discussions between MOF and regulators in these other jurisdictions or with the relevant asset managers before such changes in classification are made and how quickly these asset managers will be given to reduce their holdings in investee companies that are designated as core national assets, which may have a disruptive impact on trading of those companies' shares.

Recommendations for FEFTA Implementation

The success of these amendments will ultimately depend on their implementation. Clear guidance, transparent procedures, and efficient processing are recommended to maintain Japan's attractiveness as an investment destination while achieving legitimate national security objectives. Hence ACGA wishes to make certain recommendations:

High level of transparency and clarity on the process

We urge the MOF to provide detailed guidance on how the new investor categories will be assessed in practice. This guidance should include specific criteria for determining whether an investor has "obligations to cooperate with foreign governments" and how "substantive decision-making control" will be evaluated. Clear examples, quantitative criterion and case studies would significantly improve investors' understanding of these concepts.

Additionally, the MOF should establish and publish a comprehensive list of "Designated Core Business Entities" as early as possible to allow investors to identify in advance whether their potential targets or portfolio companies fall into this category. This list should not change too often and the process for creating this list should be transparent. This would help mitigate uncertainty and facilitate more effective investment planning.

Efficient screening mechanism

To minimize the administrative burden and delays, the MOF could consider implementing a standardized pre-assessment mechanism that allows investors to obtain preliminary guidance on their classification before proceeding with investments. This would help investors navigate the more complex exemption scheme and avoid unnecessary notifications or delays. The authorities should ensure that screening timelines remain predictable and efficient. Long or unpredictable review periods that significantly impact transaction timing would increase uncertainty and costs for investors.

Re-examine certain criteria required for prior notification

The criterion of asset managers having their main operations in one jurisdiction but their funds incorporated in another should be reconsidered as a factor determining which asset managers and asset owners need to report, as many funds are incorporated in separate jurisdictions where it is more economical and suitable based on regulations to incorporate funds there.

Thank you for the opportunity to provide this feedback. We look forward to this feedback being considered in implementation of the amendments and are available for further discussion if needed.

Yours sincerely,

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