

## CORPORATE / INTERNATIONAL TRADE LAW BULLETIN

January 15, 2024

## A Lookback on Foreign Investment Regulations in Japan in 2023

- I. FDI Screening under FEFTA
- II. Core sector business expanded  
for supply chain protection
- III. Outlook for 2024

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Amid continuing geopolitical tensions, a number of important elections are scheduled for 2024, including the presidential election in the United States and the general election in India, as well as the presidential election in Taiwan yesterday, which ended in victory for Lai Ching-te of the Democratic Progressive Party.

Over the past years, Japan has become an exception in the global M&A market, where deal activities, including those by financial sponsors, remain very solid and stable due in part to the continuation of the negative interest rate policy and the resulting depreciation of the Japanese yen. M&A in Japan is attracting more attention than ever before, including from private equity funds that have lost investment opportunities in other countries. The Japanese government has published “Case Studies Relating to the Use of Inbound M&A Transactions” with the aim of promoting further growth of Japanese companies through inbound M&A into Japan, while paying attention to economic security.<sup>1</sup>

In 2024, foreign direct investment is expected to be more important than ever for Japan and Japanese companies. On the other hand, in light of the increasing geopolitical risks, the authorities will likely conduct more stringent review over transactions involving national security concerns under the Foreign Exchange and Foreign Trade Act of Japan (“FEFTA”).

### I. FDI Screening under FEFTA

According to statistics released by the Ministry of Finance in June 2023,<sup>2</sup> the number of prior notifications made in FY2022 was 2,426, down 15.1% from 2,859 in FY2021.

However, with respect to the prior notifications made in relation to share

<sup>1</sup> [“Case Studies Relating to the Use of Inbound M&A Transactions”](#) (English version). Yohsuke Higashi, the author of this letter, served as a member of the “Study Group for Issues Relating to Inbound M&A Transactions and Case Studies” formed by the Ministry of Economy, Trade, and Industry, and contributed to the compilation of the case studies.

<sup>2</sup> [Number of Prior Notification relating to Foreign Direct Investments \(FY 2022\)](#)

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acquisitions only, the number of prior notifications made in FY2022 was 1,327 compared to 1,405 in FY2021, a decrease of only 5.5%. The largest decrease was seen in the prior notifications for the appointment of directors and the transfer or abolition of designated businesses, which decreased from 1,244 cases in FY2021 to 892 cases in FY2022, a decrease of 28.3%. Although the reason for the decrease cannot be identified based on the statistical data only, a possible reason is that the term of office of directors who were appointed based on the notifications made in FY2021 had not expired in FY2022 and did not trigger as many notification requirements.

61% (1,784 cases) of the prior notifications were made in connection with cybersecurity-related industries (which widely include software and SaaS businesses), and thus the cybersecurity-related industries continued to be the most relevant to the prior notification requirement as in previous years.

In 2023, the Japanese government did not formally block any transaction, and it has not done so ever since the implementation of the amended FEFTA in 2020, although there has been transactions voluntarily cancelled by investors. Further, questions asked during the review process have become more detailed, and it is becoming more and more common to receive requests for mitigation conditions from the authorities before clearance (typical examples of which include limitation of access to certain technologies, commitment to prevent influence from foreign governments, and commitment to report on certain matters).

In addition, even in cases where the investor has determined that the relevant business does not fall under the designated business (which would trigger the prior notification requirement) and filed an ex-post report only (with respect to which the authorities do not have a power to block), the authorities still review the contents of the ex-post report and if they suspect that the relevant business indeed falls under a designated business, they will contact the investor to see if it has not failed to make a prior notification it should have made.

Lastly, in case of omission of a prior notification, the investor is generally required to follow the voluntary reporting procedures instructed by the Ministry of Finance. But we have also seen more serious cases where investors are ordered to make formal reporting pursuant to FEFTA, where failure to report can be subject to criminal sanctions.

### II. Core sector business expanded for supply chain protection

Certain products and materials were designated as “Specified Critical Goods” under the Economic Security Promotion Act of Japan (“**ESPA**”), with respect to

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which the Japanese government will secure stable supply in Japan including by granting subsidies. In response, the public notice as of April 24, 2023 added the following industries as core sector businesses under FEFTA (which are more sensitive categories among the designated businesses triggering the prior notification requirement under FEFTA, for which exemptions from the notification requirement are made more narrowly available). The amendment has been applicable to investments made on and after May 24, 2023.<sup>3</sup>

Fertilizers (potassium chloride, etc.) Importing	Permanent Magnets Manufacturing / Material Manufacturing
Machine Tools / Industrial Robots Manufacturing, etc.	Semiconductors Manufacturing of Manufacturing Equipment, etc.
Storage Batteries Manufacturing / Material Manufacturing	Natural Gas Wholesaling
Metals and Mineral Products Refining	Marine Equipment Engine Manufacturing, etc.
Metal 3D Printers Manufacturing / Metal Powder Manufacturing	

(Based on materials published by the Ministry of Finance and other Ministries)

### III. Outlook for 2024

#### (1) Revision of the Japan Standard Industrial Classification

The designated businesses under FEFTA are classified in accordance with the Japan Standard Industrial Classification (“**JSIC**”), which is the classification used for the government’s official statistics in Japan (e.g., “3311 Power Stations” and “3911 Custom Software Services”).

JSIC was revised in 2023 and will come into effect on April 1, 2024.<sup>4</sup>

Although this revision was made only from the perspective of official statistics and would not involve a substantive amendment to the designated businesses under FEFTA, the classification numbers under JSIC are referenced in the FEFTA regulations and it is expected that the FEFTA regulations will also be revised by April 1, 2024 in order to update the referenced classification numbers accordingly.

For example, the electricity and gas businesses will be subdivided as follows, and it is expected that notification and reporting based on the new classifications will be required on and after April 1, 2024.

<sup>3</sup> [Publication of the amendment to the Public Notices adding the core business sectors of the Foreign Exchange and Foreign Trade Act to secure stable supply chains](#)

<sup>4</sup> [Japan Standard Industrial Classification, Rev. 14 \(Decided in June 2023 and effective on April 1, 2024\)](#)

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Amended	Current
331 Production, Transmission and Distribution of Electricity	331 Production, Transmission and Distribution of Electricity
3311 Electric power generation	3311 Power stations
3312 Electric power transmission and distribution	3312 Power substations
3313 Retail sale of electric power	
3314 Electric wholesale supply	
341 Production and Distribution of Gas	341 Production and Distribution of Gas
3411 Manufacture of gas	3411 Gasworks
3412 Gas pipelines	3412 Gas distribution
3413 Retail sale of gas	

### (2) Screening of Critical Infrastructure under Economic Security Promotion Act (ESPA)

In accordance with ESPA, on and after May 17, 2024, when an operator of a critical infrastructure designated pursuant to ESPA installs important equipment for the critical infrastructure or outsources maintenance and management of the critical infrastructure, the operator must submit a prior notification and undergo a review by the authorities (Please refer to our [“A Lookback on Foreign Investment Regulations in Japan in 2022”](#) for overview of ESPA).

The designated critical infrastructure operators belong to 14 business areas, some of which do not fall under the designated industries as currently specified under FEFTA, such as financial services, credit cards, and motor truck transportation.

Similar to the expansion of designated businesses in relation to the designation of “Specified Critical Goods” under ESPA (see 2. above), it is possible that the designated businesses will be expanded to include the businesses of the designated critical infrastructure operators.

### (3) Debate on Abolishment of NTT Act

There has been a political debate on the abolishment of the specific legislation (the **“NTT Act”**) governing the shareholding and operations of Nippon Telegraph and Telephone Corporation (**“NTT”**), which is the largest telecommunication company in Japan originally established as a state monopoly and was later privatized, partly in connection with potential sale of

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NTT's shares held by the Japanese government. The NTT Act specifically prohibits foreign ownership of NTT's voting rights equal to or more than 1/3.

The project team of the Liberal Democratic Party proposes (a) considering tightening foreign investment review of certain business operators of critical infrastructures (such as those designated as such under ESPA), which are particularly important for Japanese nations, including those in the information and communications industry (where the proposal suggests making no exemption available for such business operators of critical infrastructures under FEFTA), (b) considering initially implementing such enhanced foreign investment review either under FEFTA or Telecommunications Business Act applicable only to NTT and other major telecommunication businesses, and (c) that, while it is appropriate to abolish the specific ownership restriction for NTT, it is still possible that the restriction is eventually retained as a result of the considerations.<sup>5</sup>

This debate can have an impact on the overall investment screening framework under FEFTA, and we will continue to closely monitor the development.

### NEWS

#### ➤ Sapporo Office Starts Operations

On October 23, 2023, the Sapporo Office officially starts operations as a branch office of Mori Hamada & Matsumoto LPC.

The Sapporo Office will be staffed by Mitsuhiro Tateishi, who is a partner of the firm and has extensive experience in areas including M&A, business succession, and startups, together with Kota Inatsu, an associate of the firm. The Sapporo Office will endeavor to contribute to the economic development of Hokkaido by providing cutting-edge legal support in a wide range of areas, including M&A, startups, business succession, renewable energy and other infrastructure/energy-related matters, crisis management, finance, litigation, restructuring, and cross-border transactions, while working in close coordination with the firm's lawyers not only within Japan (Tokyo, Osaka, Nagoya, Fukuoka, and Takamatsu) but also at our overseas offices (those in Beijing, Shanghai, Singapore, Bangkok, Yangon, Ho Chi Minh City, Hanoi, Jakarta, and New York) as well as with other overseas law firms, etc. with which we are allied.

<sup>5</sup> ["Proposal on the Act on Nippon Telegraph and Telephone Corporation, etc." \(December 5, 2023\)](#)

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➤ **Notice of Shanghai Office Relocation**

With effect from December 25, 2023, we will relocate our Shanghai Office from the 6th Floor to the 22nd Floor of the Hang Seng Bank Tower.

Address / Contact

22nd Floor, Hang Seng Bank Tower,  
1000 Lujiazui Ring Road, Pudong New Area, Shanghai 200120,  
The People's Republic of China  
TEL : +86-21-6841-2500 / FAX : +86-21-6841-2811

\*Telephone and fax numbers will remain the same.

➤ **60 new lawyers joined Mori Hamada & Matsumoto**

➤ **17 new partners and 17 new counsels**

As of January 1, 2024, 17 lawyers became partners of the firm.

Partners:

Mai Umemoto, Kanako Tajiri, Takanori Shinohara, Reiji Hosokawa, Yumi Kanamaru, Hiroshi Shirane, Saori Takekoshi, Wataru Ishida, Takaaki Kanayama, Yasutaka Tokuda, Seri Takahashi, Yu Takahashi, Masaki Kakimoto, Yuma Adachi, Julian Barendse, Tawatchai Boonmayapan, Tip-apa Limvichai,

Also, 17 lawyers became counsels as of January 1, 2024.

Counsels:

Aiko Mizuguchi, Kanta Suzuki, Kana Takeuchi, Shoichi Niwa, Hirohiko Tanaka, Seiko Yabe, Kaei Ro, Yoshito Yamamoto, Kenta Nishioka, Shuntaro Shirai, Shuhei Takaishi, Mitsuhiko Nakada, Hirokazu Hasegawa, Lexi Takamatsu, Rawi Meckvichai, Sooksun Popun-Ngarm, Supalerk Rugsarigorn

The firm appreciates your continued support.

➤ **MHM awarded "Gold" in the PRIDE Index 2023**

On November 7, 2023, MHM received the "Gold" award in the PRIDE Index 2023 (see 1), an evaluation index for initiatives for LGBTQ+ and other sexual minorities (hereafter LGBTQ+) in the workplace, established

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by the general incorporated association “work with Pride” (see 2).

In addition to MHM Pride, which is held annually in June, the PRIDE Index also recognizes efforts that have been made to improve and disseminate internal systems and procedures as well as to educate and exchange opinions through training and the internal community in order to realize the world outlined in the [Diversity & Inclusion Policy](#). The “Gold” award is the result of these efforts.

(1) The PRIDE Index is an index consisting of five areas of evaluation: Policy (declaration of action), Representation (community for LGBTQ+ people), Inspiration (educational activities), Development (personnel system and programs), and Engagement/Inspiration (human resource management). It was created to help realize a Japan where LGBTQ+ (lesbian, gay, bisexual, transgender, and other sexual minorities) people find their workplaces comfortable.

(2) work with Pride is an organization that supports the promotion and establishment of diversity in management related to LGBTQ+ in companies and other organizations.

MHM will continue to engage in a variety of activities in order to realize as soon as possible an inclusive society in which all of its diverse members, including LGBTQ+ members, can play an active role in their own way.

➤ **Important Notice: Beware of fraud involving misrepresentation of the firm or impersonation of the firm's lawyers or staff**

We have become aware of instances of individuals making phone calls and sending emails, fraudulently using the names of the firm's lawyers, to the effect that the recipient is entitled to receive compensation for losses. The firm is not involved in any of these instances.

If you receive any unexpected contact from a person who claims to represent Mori Hamada & Matsumoto or claims to be one of the firm's lawyers or staff members, please refrain from offering any prompt response, and adequately verify the identification of that person. Also, please contact the firm using the following contact details to share that information with us. Your assistance is appreciated.

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Please note that our lawyers will never tell you not to contact other lawyers, secretaries, staff members, or offices of the firm about a matter with regard to which we have contacted you.

Please be advised that any such communication is basically an act of fraud.

Mori Hamada & Matsumoto

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