FOREIGN DIRECT INVESTMENT REGULATION GUIDE

Editor
Veronica Roberts

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This article was first published in December 2021
For further information please contact insight@globalcompetitionreview.com

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK

www.globalcompetitionreview.com

ISBN 978-1-83862-613-6

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

Acknowledgements

The publisher acknowledges and thanks the following for their learned assistance throughout the preparation of this book:

Ankura Consulting Group

Ashurst LLP

Clifford Chance

Covington & Burling

Eversheds Sutherland

Fingleton Limited

Gilbert + Tobin

Herbert Smith Freehills

Hogan Lovells

Lipani Catricalà & Partners

McCarthy Tétrault LLP

Publisher's Note

Foreign direct investment is an area in flux, where the appetite – and necessity – for outside capital is running into growing national security concerns, as well as increasingly strict regulations on mergers. Although there were already controls in place before covid-19, the pandemic and a growing shift towards protectionist economic policies have crystallised these concerns more widely among governments around the world. As Veronica Roberts, Ruth Allen and Ali MacGregor point out in their introduction, there is increased scrutiny of deals in a number of jurisdictions, including the United States, Europe and Australia. At the same time, there is still a keen need for foreign investment in many Asian countries. Practical and timely guidance for both practitioners and enforcers trying to navigate this fast-moving environment is therefore critical.

The *Foreign Direct Investment Regulation Guide* – published by Global Competition Review – provides just such detailed analysis. It examines both the current state of law and the direction of travel for the most important jurisdictions in which foreign direct investment is possible. The Guide draws on the wisdom and expertise of distinguished practitioners globally, and brings together unparalleled proficiency in the field to provide essential guidance on subjects as diverse as the evolving perspective on deals with China to the changing face of national security – for all competition professionals.

Contents

PART 2: ANALYSIS OF KEY FOREIGN INVESTMENT JURISDICTIONS

Part 2

Analysis of Key Foreign Investment Jurisdictions

CHAPTER X

Japan

Michihiro Nishi, Masafumi Shikakura, Shunsuke Nagae and Machiko Ishii[1]

Overview of regime

Applicable legislation and relevant authorities

The primary law that governs foreign investments in Japan is the Foreign Exchange and Foreign Trade Act (the FEFTA).[2] The Act is supplemented by various orders issued by the Cabinet.

Japan's Ministry of Finance (MOF), Ministry of Economy, Trade and Industry (METI) and other ministries with jurisdiction over targeted Japanese businesses have authority to review foreign investment transactions covered by the FEFTA. In addition, the Bank of Japan has jurisdiction over certain administrative matters. All reports and notifications to the ministries must be submitted through the Bank of Japan.

Separately from the regulations under the FEFTA, investments by foreign investors in certain sensitive sectors (such as telecommunications, broadcasting and transport) are regulated under specific laws targeting those industries. Examples of these laws are the Broadcast Act, the Radio Act, the Civil Aeronautics Act, the Consigned Freight Forwarding Business Act, the Mining Act, the Ships Act and the Act on Nippon Telegraph and Telephone Corporations.

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1 Michihiro Nishi is a partner, Masafumi Shikakura is a counsel, Shunsuke Nagae is a senior associate and Machiko Ishii is an associate at Clifford Chance. The authors appreciate the support and contribution provided by Yuki Nakatori and Tatsuya Nakano, both associates at Clifford Chance.

2 An unofficial English translation of the Foreign Exchange and Foreign Trade Act [FEFTA] can be found at https://www.mof.go.jp/english/policy/international_policy/fdi/FEFTA.pdf.

Scope of regime

Recently Japan has been tightening its regulation of foreign direct investment (FDI) to align itself with the global trend towards broadening the range of sectors falling under FDI regulations. Japan has also lowered the threshold for pre-closing approval from 10 per cent to 1 per cent in relation to acquisitions of shares in Japanese listed companies in regulated sectors, although exemptions have become available for portfolio investment by financial firms (e.g., securities firms, banks, insurance companies and asset managers). Recent amendments to the FEFTA demonstrate the government's growing concern about national security and the leakage of critical technology, particularly in the areas of information and communications technologies.

The FEFTA regulates inward direct investments, which are defined to include the following types of transactions[3] by foreign investors:

- transactions resulting in a foreign investor together with any party who has a special relationship with those foreign investors (as explained below) holding 1 per cent or more of the shares or voting rights of a Japanese listed company;
- acquiring any share in a Japanese non-listed company from persons other than foreign investors. Even the acquisition of just one share is covered. This also covers the incorporation of a subsidiary;
- agreeing with a substantial change in business purpose of a Japanese company;[4]
- agreeing with any of the following matters, which are designated as matters that would materially affect the management of a Japanese company:[5]
    - the appointment of directors or statutory auditors (*kansayaku*);
    - the sale of the entire business or part of the business;
    - the sale of all or part of the shares of a subsidiary;
    - a merger;
    - a company split;
    - dissolution; and
    - the abolition of business;

3 There are other transactions that could fall within the scope of the inward direct investments to which the FEFTA applies, such as obtaining consent from another foreign investor regarding the joint exercise of voting rights, or accepting a proxy enabling the foreign investor to exercise voting rights.

4 If the Japanese company is a listed company, this is only applicable when the foreign investor and any party who has a special relationship with that foreign investor holds one-third or more of the total voting rights in the Japanese company.

5 If the Japanese company is a listed company, this is only applicable when the foreign investor and any party who has a special relationship with that foreign investor holds 1 per cent or more of the total voting rights in the Japanese company.

- succession of all or part of the business from a Japanese company by a demerger, merger or business transfer;
- granting a loan with a term of more than one year to a Japanese company where the total amount of loans exceeds ¥100 million and the total outstanding amount of the Japanese company's loans and bonds (if any) held by the foreign investor and any party who has a special relationship with the foreign investor exceeds 50 per cent of the total debt of the Japanese company following the loan disbursement; and
- purchasing bonds with a term of more than one year between the acquisition date and the maturity date issued by a Japanese company where the outstanding amount of the Japanese company's bonds held by the foreign investor exceeds ¥100 million and the total outstanding amount of the Japanese company's loans and bonds held by the foreign investor and any party who has a special relationship with the foreign investor exceeds 50 per cent of the total debt of the Japanese company following the acquisition of the bonds.

Note that acquisitions of shares in a Japanese non-listed company from foreign investors (specified acquisitions) are not categorised as inward direct investments. However, in limited sectors (that are part of the business industries for which pre-closing notification is required in relation to inward direct investments), these specified acquisitions would require a pre-closing notification.

A 'foreign investor', as defined under the FEFTA, includes the following:

- a non-Japanese resident (individual);
- a legal entity or other form of body corporate established under a foreign law, or a legal entity or other form of body corporate that has its principal office in a foreign country;
- a legal entity of which 50 per cent or more of its voting rights are held, directly or indirectly, by a person or entity as described above;
- an investment limited partnership (*toshi jigyo yugen sekinin kumiai* (LPS)), a general partnership (*nin-i kumiai* (NK)) or similar investment limited partnership governed by a law other than Japanese law if (1) the foreign investor's investment ratio in the LPS, NK or non-Japanese limited partnership is 50 per cent or more, or (2) the number of non-Japanese general partners in the LPS or NK is 50 per cent or more; and
- a legal entity or other form of body corporate in Japan, in which more than 50 per cent of the directors, executives or officers with authority to represent it are non-residents of Japan.

A 'party who has a special relationship with a foreign investor' is defined under the FEFTA to include (1) an entity in the foreign investor's group (subsidiary, parent company, sister company, etc.), (2) a director or officer of the foreign investor, (3) an entity that the directors or officers of the foreign investor control, or (4) an entity that agrees to act in concert with the foreign investor in respect of the voting rights of the targeted listed company.

Review process – procedure and substantive assessment

Pre-closing notification

If an inward direct investment by a foreign investor targets a Japanese business engaged in a designated sector (e.g., weapons, aircraft, space, nuclear facilities, dual-use technologies, cybersecurity, pharmaceuticals, mining of critical material and construction in coastal preservation zones or port facilities, electricity, gas, telecommunications, water supply, railway services, oil, heat supply, broadcasting, biological chemicals, security services, agriculture, forestry and fisheries, leather manufacture, public transportation, air transportation, maritime transportation, electronics[6] and software relating to information processing),[7] a pre-closing notification must be filed with the MOF and other relevant authorities through the Bank of Japan.

The foreign investor must observe a statutory 30-day waiting period after the notification is filed before completing the transaction. However, in most cases in which the proposed transaction would pose little threat to the national security of Japan, the government typically makes an effort to shorten the waiting period to four business days from the date of notification, provided that this is not a legal obligation imposed on the government. In some cases the waiting period is longer than four business days.

During the waiting period, the ministries will review the transaction and determine whether to take any action. The authorities will assess whether the proposed transaction is likely to impair national security, impede public order, compromise public health and safety or have a significant adverse effect on the smooth functioning of the Japanese economy. The MOF and other ministries responsible for relevant business sectors have published factors to be considered by the authorities in reviewing inward direct investments, including, but not limited to (1) the possibility of leaking of technologies or information that relate

6 Such as integrated circuits, semiconductors, flash memory storage media, mobile telephones and computers.

7 This is not the entire list as numerous sectors are included.

to the protection of national security, (2) the foreign investor's capital structure and beneficial ownership, (3) its planned behaviour relating to investment, and (4) the track record of the foreign investor's compliance with the FEFTA and equivalent or similar legislation in other jurisdictions.[8]

The authorities have a broad discretion to either recommend changes to the transaction or discontinue the transaction.

An appeal may be lodged against a negative decision through a motion to the relevant ministry, which is then required to hold a hearing on the matter. The party that is dissatisfied with the decision by the relevant ministry in the appeal procedure may opt to bring an action to court.

When the inward direct investment or specified acquisition is completed in accordance with the pre-closing notification, the foreign investor is required to file a completion report with the Japanese authorities within 45 days of the date of completion of the transaction.

Exemptions

Pre-closing notification is exempted for certain types of investments, as described below.

Portfolio investments in Japanese listed companies by certain foreign financial institutions (e.g., securities firms, banks, insurance companies, asset managers, trust companies and registered corporate-type investment trusts, which are subject to regulations or supervision under financial regulatory laws in Japan or foreign jurisdictions) are exempted without an upper limit if they comply with the following conditions (known as non-managerial involvement conditions):

- neither the foreign investor nor any close relative serves as a director or a statutory auditor (*kansayaku*) of the listed company;
- the foreign investor may not, whether directly or through other shareholders, make any proposal at any shareholders' meeting with respect to the transfer or disposition of any business belonging to a designated sector; and
- the foreign investor may not have access to non-public technical information pertaining to any designated sector.

Note that such portfolio investments are still subject to a post-closing notification requirement if the foreign financial institution acquires 10 per cent or more of the total shares or voting rights in a Japanese company.

8 https://www.mof.go.jp/english/policy/international_policy/fdi/gaitamehou_20200508.htm.

Portfolio investments in a non-core sector[9] by foreign investors are exempted without an upper limit if they comply with the non-managerial involvement conditions. Note that this is subject to a post-closing notification requirement if the foreign investor purchases 1 per cent or more of the total shares or voting rights in a Japanese company.

Portfolio investments of under 10 per cent of the total shares or voting rights in a Japanese company in core sectors by foreign investors are exempted if they comply with the following conditions (known as the extended non-managerial involvement conditions):

- all non-managerial involvement conditions;
- the foreign investor does not participate in any committees with important decision-making authority with respect to projects in core sectors; and
- the foreign investor refrains from submitting proposals in writing to the board of directors or equivalent body to request a response or action in a timely manner with regard to business activities in core designated sectors.

Note that this is subject to a post-closing notification requirement if the foreign investor purchases 1 per cent or more of the total shares or voting rights in a Japanese company.

No exemptions apply to (1) foreign state-owned enterprises (except those accredited by the relevant Japanese authority) and (2) investors with a record of sanctions imposed following violations of the FEFTA.

Given the foregoing, in general, activists or private equity funds that cannot commit to complying with the above non-managerial involvement conditions would not be exempted in many cases. On the other hand, hedge funds and investment funds that act as passive investors may be exempted if they are happy to comply with the non-managerial involvement conditions or extended non-managerial involvement conditions, as the case may be.

Post-closing notification

A post-closing notification is required for an inward direct investment in a non-designated sector. The foreign investor must submit the notification within 45 days of the date of completion of the transaction.

9 Designated sectors are divided into 'core' and 'non-core' sectors. In broad terms, the ordinances designate 12 businesses as core sectors, including software businesses handling the personal information of no fewer than one million people.

The FEFTA did not change the post-closing notification threshold for listed companies in non-designated sectors, which remains at 10 per cent of the listed company's equity or total voting rights.

Transactions subject to a post-closing notification do not require further approval or action from the ministries; notice is for information purposes only and is not publicly disclosed.

Penalty for non-compliance

When a foreign investor fails to file a notification for pre-closing approval or fails to obtain pre-approval but completes the inward direct investment or specified acquisition, the relevant Japanese authority may order the foreign investor to adopt certain measures, such as the disposal of some or all of the shares. If the foreign investor does not follow the order, it would be liable for a fine of up to ¥1 million or triple the total purchased amount, whichever is the higher, or imprisonment for up to three years, or both.

If a foreign investor fails to file a post-closing notification, it would be liable for a fine of up to ¥500,000 or imprisonment for up to six months, or both.

Remedies

Pursuant to the FEFTA, when the Minister of Finance or other ministers in charge of the relevant sector extend the waiting period up to five months for inward direct investments and specified acquisitions, and if they find, as a result of the examination, that the inward direct investment or specified acquisition stated in the notification may have an effect on national security, public order, public health and safety, or the smooth functioning of the national economy, they may issue a recommendation that the foreign investor should modify the substance of or discontinue the transaction. The foreign investor must notify the authorities, within 10 days of the day on which the recommendation is issued, whether the investor accepts the recommendation. If the foreign investor fails to give notice or gives notice of rejection of the recommendation, the authorities may order the foreign investor to modify the substance of or discontinue the transaction. If the foreign investor fails to follow the recommendation or violates the order, the authorities may order the foreign investor to adopt certain measures, such as the disposal of some or all of the shares.

Impact of covid-19 pandemic

Expansion of core sectors

On 15 June 2020, the Japanese government announced it had added the following sectors to the list of core sectors:

- the manufacture of pharmaceuticals for specific infectious diseases (including pharmaceutical intermediates of those pharmaceuticals); and
- the manufacture of specially controlled medical devices (including accessories for those medical devices and certain parts of those medical devices or accessories) as defined under the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (Act No. 145 of 1960, as amended).

Relaxed procedures

Some procedural changes have been made because of the covid-19 pandemic.

On 12 March 2020, the MOF introduced a grace period for reporting obligations under the FEFTA in response to the pandemic. If the reporting obligations cannot be complied with as a result of unavoidable circumstances arising from the pandemic, a grace period will be granted for fulfilling the reporting obligations. If this is the case, reports should be made promptly once it is possible to make them.

Further, some amendments have been made in an effort to enable procedures to be completed remotely. On 30 October 2020, the requirement of wet ink signing and sealing for filing under the FEFTA was abolished in response to the Basic Policy on Economic and Fiscal Management and Reform 2020, which in principle advocates the elimination of the need for seals in administrative procedures. In addition, as of 25 December 2020, online filing under the FEFTA can be completed through an online system maintained by the Bank of Japan.

Insights into recent enforcement practice

Following the expansion of the scope of designated sectors in August 2019, the number of pre-closing notifications increased sharply in 2019 and this trend continued in 2020. Of all the pre-closing notifications made in 2019 and 2020, approximately two-thirds concerned cybersecurity, which became a designated sector in August 2019.[10]

10 Ministry of Finance [MOF], press release, 'The number of pre-closing notifications etc. relating to inward direct investment etc.' (30 October 2020) available (in Japanese only) at https://www.mof.go.jp/policy/international_policy/gaitame_kawase/press_release/20210707-2.pdf.

There has been only one case so far in which a proposed acquisition by a foreign investor was blocked by the Japanese government. This was in 2008, when The Children's Investment Fund, a UK investment fund, planned to increase its shareholding in Electric Power Development Co, Ltd (a major electricity producer in Japan, commonly known as J-Power) from 9.9 per cent to 20 per cent.[11] The Japanese government issued an order of discontinuance of the proposed investment in J-Power by the fund on the grounds that the investment might affect the stable supply of electricity and affect the government policy on nuclear power and the nuclear fuel cycle.

In addition, in practice, foreign investors voluntarily abandon transactions or change transaction structures to alleviate national security concerns when the authorities' initial reaction to the proposed deal is negative. Foreign investors often try to avoid receiving an official rejection that might be announced publicly or otherwise gain media attention. This type of voluntary behaviour by the parties explains why there have not been many instances of transactions being officially rejected by the Japanese government.

The fact that the number of official rejections is so low does not necessarily mean that government reviews are cursory.

In fact, the relevant authorities keep a watchful eye on various potential investments in practice and expressed the intention to closely review some of them in the past. The recent media coverage outlined below indicates that the Japanese government intends to block FDI in companies conducting business in designated sectors if the investments go through the formal review process.

In 2017, in connection with the sale of a semiconductor business by a major electronics manufacturer, it was reported that METI mentioned that 'we would not hesitate to enforce the FEFTA if there is a concern about technology leakage'.[12]

In 2021, a minority investment (3.65 per cent) by a Chinese technology giant in a major Japanese online mall operator was reported. Although the acquisition was classified as a passive investment, which is exempt from pre-closing notification, the Japanese government expressed its intention to strictly monitor whether the investor complies with the relevant conditions and whether sensitive information is ring-fenced.

11 Note that in 2008, pre-closing notification regarding the acquisition of shares in a Japanese listed company was triggered only if the buyer was to acquire 10 per cent or more of the shares in that company.

12 In an article in *The Nikkei* of 9 May 2017.

Practical insights and strategic guidance for foreign investors

Indirect transfer of shares

Generally, acquiring a foreign company that has a Japanese subsidiary will not be considered an inward direct investment as the acquisition of shares in the Japanese subsidiary by the parent entity must have been treated as such and the implications of the investment must already have been considered at the time. Therefore, a change of control at the parent level would not generally trigger a separate reporting obligation unless the transaction is viewed as a circumvention of the inward direct investment regulations.

On the other hand, if the acquisition is not a share deal but an asset deal, there is often a local asset transfer to be carried out, which would also be classified as a different type of inward direct investment and may trigger an FDI filing.

In addition, even in a share deal, investors should watch out for other triggering events that are not as obvious as share transfers, as described below.

Triggering events that are not obvious

An FDI filing in Japan can be triggered upon the appointment of a director or a statutory auditor (*kansayaku*) who is a close relative of a foreign investor, if the Japanese entity conducts business in a designated sector. In this regard, if the foreign investor has filed and obtained clearance for the pre-closing notification of the acquisition of 50 per cent or more of the voting rights of the Japanese company in question, subsequent appointments of related persons would not separately trigger an additional pre-closing notification requirement. However, if a pre-closing notification is filed for the acquisition of fewer than 50 per cent of the voting rights, or notification was not required for the initial acquisition for some reason, a pre-closing notification would be required subsequently each time a director or a statutory auditor is appointed (regardless of whether it is a reappointment or replacement).

A subsequent capital injection could also be a triggering event that occurs after the acquisition of a Japanese company. The issuance of additional shares by a Japanese company in the parent company would also trigger the filing requirement, unless the parent company is a Japanese listed company that is regarded as a foreign investor.

Stake-building for takeover of a listed company

It was previously standard practice for private equity sponsors to increase their stake to up to 5 per cent before the launch of a tender offer without any filing requirements. Any larger stake triggered a requirement to file a large shareholding report under the Financial Instruments and Exchange Act of Japan, which could

invite market speculation that a further acquisition of shares may be contemplated and hence affect the market price significantly. This was partly because an FDI filing in Japan would not be triggered until the stake was increased to 10 per cent or more.

However, following amendments to the FEFTA that became effective in May 2020, an acquisition of 1 per cent or more of the shares in a Japanese listed company became subject to the filing requirements. That being said, a foreign investor is still able to utilise the passive investment exemption to avoid the filing requirement as long as the relevant conditions are met (see 'Exemptions' under 'Review process', above).

Waiting period and impact on the deal timeline

Although the standard waiting period for a pre-closing notification is 30 days, this period can be extended if the government has concerns from a national security standpoint. Therefore, if the investment is based on an investment agreement with a third party or the target company, it would be advisable to include in the investment agreement a condition precedent to the effect that the closing is conditional upon the clearance of the pre-closing notification.

The notification should be made well in advance of the expected closing date, especially if the target operates businesses in core sectors or the transaction structure is complicated since the filing party may receive a request for information from relevant ministries. Such a request for information may include the background to the transaction, the investor's plan of future engagement with the target, the reason why the investor is interested in the target's business, whether the products or services of the target are supplied or provided to the government or companies that conduct businesses relating to products or services that are important from the perspective of national security, and other general information about the target's business (including its market share).

Reform proposals

Regulation amendments to secure stable supply of critical minerals

Considering that securing a stable supply of critical and strategic mineral resources, such as rare earths, is an important issue for economic security, the Japanese government added two new categories within the mining sector (including deep sea mining) to the core sectors under the FEFTA on 5 October 2021:

- business sectors regarding 34 critical minerals, including rare earth elements (i.e., designated minerals), namely (1) metal mining of designated minerals, (2) manufacturing, repair, maintenance or software for devices or products used for metal mining of designated minerals and (3) component analysis services regarding designated minerals; and
- construction businesses that improve or maintain port facilities on islands identified as being important for mining operations for mineral resources, such as Okino-Tori-shima and Minami-Tori-shima. The exploration or measurement for, or design of, such construction is also covered.

The amendments appear to be targeted at not only protecting strategic mineral resources within the Japanese territory but also at maintaining and securing capability associated with both land-based and deep-sea exploration and mining activities.

This amendment applies to foreign direct investments completed on or after 4 November 2021.

Act on Review and Regulation of Real Estate Usage

Apart from the FEFTA, the Act on Review and Regulation of Real Estate Usage was enacted in June 2021, by which the government regulates the transfer and use of real estate properties close to or within certain facilities and places that are important from a national security perspective. It has been reported that the government will designate these areas around autumn 2022.

Upon the Act coming into force, (1) the parties to the transfer of real estate property in the designated areas will be required to submit a pre-closing notification to the government regarding the transfer of the real estate property, and (2) the owners of the real estate property in the designated areas may be required to file a report, and the manner in which the property is used may be regulated. These obligations apply irrespective of nationality. However, foreign investors should be aware that there may be scrutiny of their acquisition or ownership of real estate property.

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Michihiro Nishi is a partner in Clifford Chance's corporate group in Tokyo. He advises on a wide range of corporate transactions, with special focus on cross-border and domestic M&A, private equity and public company deals, including corporate governance and disclosure matters. He also advises on foreign investment regulations, corporate disputes, export control, antitrust, data privacy, employment and other general corporate matters.

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He has also served as a lecturer at Keio University, Faculty of Law, teaching corporate law practice since 2016. He is admitted to practise law in Japan (*bengoshi*) and New York.

Michihiro has been recognised by *The Legal 500 Japan* and was profiled by Nikkei as a lawyer to watch in 2021.

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He was seconded to the M&A advisory department of a major Japanese securities company, and was also seconded to the legal department of an international pharmaceutical company in Japan.

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Masafumi received his LLB and JD degrees from Kyoto University and is admitted to practise law in Japan (*bengoshi*) (2007).

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FIRM DESCRIPTION:

Clifford Chance has one of the largest integrated international and domestic law offices in Japan. The firm has worked for more than 40 years on Japan-related matters and has had a presence in Tokyo since 1987.

In Tokyo, we have approximately 50 legal staff, including foreign and Japanese (bengoshi) lawyers. Many of our Japanese lawyers have worked in our overseas offices and many of our foreign lawyers have spent significant time in Japan and speak fluent Japanese.

We have detailed knowledge of Japanese law and its practical application in a commercial context, taking a proactive approach to identifying issues and solving problems with a high degree of responsiveness. For transactions that require the expertise of both Japanese and foreign lawyers, we operate as a single team under

the leadership of experienced partners, providing our clients with a seamless service and comprehensively addressing all their legal needs, whether Japanese or international. We have the capacity to handle large-scale and complex transactions in a timely and cost-efficient manner.

Our lawyers have played a leading role in some of the most high-profile deals in Japan in recent years and advise on a variety of matters, including:

- mergers and acquisitions (international and domestic);
- national and international corporate and commercial transactions;
- private equity and venture capital, inward investment, and joint ventures;
- real estate acquisitions, disposals and financings;
- regulatory;
- funds;
- capital markets, securitisation and repackaging;
- asset-backed financing, bank lending, corporate finance, acquisition and leveraged finance;
- project finance;
- structured finance; and
- litigation and dispute resolution and employment.

While the appetite – and necessity – for outside capital remains unabated, increasingly this is running into national security concerns, as well as stricter regulations on mergers. Although controls on foreign direct investment were already in place before covid-19, the pandemic and a growing shift towards protectionist economic policies have brought these concerns into sharper focus for governments. The *Foreign Direct Investment Regulation Guide* – edited by Veronica Roberts – provides practical and timely guidance for both practitioners and enforcers trying to navigate this fast-moving environment. The Guide draws on the wisdom and expertise of distinguished practitioners globally to provide essential guidance on subjects as diverse as the evolving perspective on deals with China to the changing face of national security.

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ISBN 978-1-83862-613-6