

Exhibit 4-1

Japan

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Law and policy

- 1 What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

Direct inward investment into Japan by foreign investors has been free in principle for more than a decade since the Foreign Exchange and Foreign Trade Act (the Forex Act) was amended in 1998. In general, the only requirement for foreign investors making investments in Japan is to submit an ex post facto report to the relevant ministries. The purpose of imposing a reporting requirement is to make a statistical record resulting in no ex post facto review or investigation conducted by the government.

However, the Forex Act requires prior filing for certain limited investments involving particular areas of businesses and particular geographic areas or countries. The business-related restrictions are imposed on, among others, investments on business related to:

- national security (eg, weapons, airplanes, nuclear power or space development);
- public infrastructure (eg, electricity, gas, water, telecommunications or railways);
- public safety (eg, vaccine manufacturing or private security service); and
- domestic industry protection (eg, agriculture).

The area-related restrictions are imposed on, among others, investments concerning countries with which Japan has not executed a treaty on foreign direct investments (eg, North Korea) and certain activities involving the Iranian government, entities, individuals or groups.

If the investment falls into such an exceptional category, the party who intends to make such an investment is required to submit prior notification of the intended investment to the relevant ministries. The relevant ministries will then review the filed report in principle within 30 days from filing. After reviewing, the relevant ministries may order for a suspension or amendment of the filed investment if they find the investment is likely to:

- impair the national security;
- impede public order;
- hamper the protection of public safety; or
- have a significant adverse effect on the smooth management of the Japanese economy.

It should be noted, however, that it is extremely rare for the ministries to issue such an order. In fact, there has been only one case where the ministries have actually issued an order for suspension of investments under the current Forex Act.

Since 1980, when the current Forex Act was enacted, the first and only order for suspension of the investment was issued in 2008 when The Children's Investment Master Fund (TCI), a UK-based activist fund, intended to purchase up to 20 per cent stakes of J-Power, an electric power wholesaler owning core infrastructures

in the Japanese electricity supply such as nuclear plants and electric lines. The relevant ministers announced in their press release that, upon their review, including a series of interviews with TCI, they found risks of impairing the financial condition of J-Power, reduction of future capital expenditure or maintenance spending on fundamental infrastructures, and a negative effect on construction and maintenance of the Ohma nuclear plant (an important plant for Japanese nuclear fuel recycling) if TCI became a holder of 20 per cent shares in J-Power. An official of the Ministry of Finance stressed in an article describing the position of the Japanese government in this instance that this case was exceptional since all other foreign investments (760 filings were made from 2006 to 2008) were approved since the current Forex Act was enacted in 1980.

To provide a comprehensible overview, the answers to the following questions are based on the assumption, except where otherwise specified, that the foreign investments are made through either acquisition of shares or equities or establishing subsidiary, branch or other offices, which are the most popular options usually considered by foreign investors to enter into the Japanese market.

- 2 What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals on the basis of the national interest?

The main law is the Forex Act along with supplemental regulations.

Further, the following laws involving specific areas of businesses regulate investments by foreign nationals or set the upper limit of holding ratio by foreign nationals:

- 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.

- 3 Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

The Forex Act is applied for foreign investments conducted by foreign investors in the form of, among others:

- the acquisition of 10 per cent or more of shares of listed companies;
- the acquisition of shares of unlisted companies;
- the transfer of shares from a non-resident individual to a foreign investor (where a non-resident acquired such shares while a resident);

- establishing a branch, factory or other business offices (excluding a representative office) in Japan or substantially changing the type or business objectives of such a branch, factory or other business office; excluding those with the business objectives of:
- banking;
- a foreign insurance company;
- a gas business;
- an electricity business;
- certain types of securities business;
- an investment management business;
- a foreign trust business; or
- a fund transfer business;
- extension of loans to Japanese corporations exceeding certain thresholds; and
- acquisition of private placement bonds issued by Japanese corporation exceeding certain thresholds.

As stated above, acquisitions of the minority interests, except for acquisitions of less than 10 per cent of the shares of listed companies, are generally covered by the Forex Act.

Investment in certain sectors, such as investment in the weapon manufacturing business, may fall into the categories in which the prior notifications are required as explained in question 1. Once the prior notification is required, the authorities will review the transaction from the view of whether the investment likely to impair national security, impede public order or hamper the protection of public safety. There are no rules or regulations requiring special scrutiny for any particular sectors in such reviews by the authorities.

- 4** How is a foreign investor or foreign investment defined in the applicable law?

Under the Forex Act, a foreign investor is defined as the following individuals or entities;

- (i) non-resident individuals;
- (ii) corporations, partnerships, associations or other entities established under foreign jurisdictions or having their principal offices in foreign countries;
- (iii) corporations established under Japanese law of which the ratio of the sum of the voting rights directly or indirectly (through entities of which the ratio of the voting rights held by those listed in item (i) or (ii) is 50 per cent or more) held by those listed in item (i) or (ii) is 50 per cent or more; and
- (iv) corporations, partnerships, associations or other entities in which the majority of either the officers (ie, directors or similar) or the representative officers are non-resident individuals.

- 5** Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

There are no specific rules for investments made by SOEs or SWFs.

- 6** Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

The Minister of Finance and the Minister having jurisdiction over the targeted business are the competent authorities to review mergers or acquisitions under the Forex Act. While the decision-making authorities are such ministers, all of the application or reports must be submitted through the Bank of Japan.

The examples of the jurisdictions of the ministers are follows;

- the Prime Minister: banks, trusts, security business, insurance businesses and investment advisers;
- the Minister of Finance: import and export of precious metals and import and export of alcohol;

- the Minister of Agriculture, Forestry and Fisheries: agriculture and fishery and the manufacture of food or drink;
- the Minister of Health, Labour and Welfare: pharmaceutical matters and medical devices; and
- the Minister of Economy, Industry and Technology: the manufacture, sales, import and export of aircraft and the manufacture, sales, import and export of weapons and electricity.

- 7** Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

For those transactions only requiring ex post facto reports, the authorities will not have any discretion to either approve or reject the transactions as the ex post facto reports are required mostly for the purpose of statistical analysis.

On the other hand, in reviewing the transactions subject to the prior notifications, the authorities (the minister of finance and the minister having jurisdiction over the targeted business as shown in question 6) have, theoretically speaking, relatively broad discretion under the Forex Act.

However, as a matter of practice, the Japanese government has been hesitant to intervene in the economic activities by foreign investors. As explained in question 1, there has been only one case where the ministries have issued an order for the suspension of investments since 1980 when the regime under the present Forex Act was established.

Procedure

- 8** What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

As explained in question 1, the Forex Act imposes prior notification requirements on investments into certain limited areas of businesses and investments involving certain geographical regions.

As long as the intended investment falls into one of these categories, the filing is mandatory and there are no numerical thresholds such as turnovers, asset size or investment amounts for exemptions. Even in the case where the business triggering the prior notification is relatively so small as to the size of the overall business, the filing could be triggered. For instance, if a part of a battery being sold by an electric manufacturer happened to be used in satellites, then, the prior notification could be required. As a waiting period of prior notification (see question 11) could delay the whole process, careful review of the targeted business is highly recommended, especially when a targeted company conducts wide ranges of business such as electrical manufacturers.

- 9** What is the procedure for obtaining national interest clearance of transactions and other investments?

An application must be submitted to the minister of finance and the minister having jurisdiction over the targeted businesses via the Bank of Japan. Forms for application are available at the website of the Bank of Japan. There are no filing fees.

An application of the prior notification will be reviewed by the relevant ministers. The authority may require hearings, written responses for its inquiries and submission of additional documents.

- 10** Which party is responsible for securing approval?

An investor is responsible for securing approval. Therefore, if the investment falls into the category triggering the prior notification, it is strongly recommended in practice to make a filing of an application for the prior notification to the relevant authorities and a lapse of the relevant waiting period (see question 11) as condition precedents to the consummation of the investment.

- 11** How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

Under the Forex Act, an investor may not make an investment, for which prior notification is required, for a period of 30 days after the acceptance of the application by the Bank of Japan. However, such a waiting period will be normally shortened to two weeks from the acceptance in accordance with the relevant ordinance. According to the Ministry of Finance, more than 95 per cent of applications have been so shortened. Moreover, with an aim to facilitate more inward investment in Japan, the Ministry of Finance and other relevant ministries have implemented expedited fast-track options for green field investment (ie, certain investments involving a wholly-owned Japanese subsidiary), roll-over investments (ie, certain investments, the same type of which were previously filed within six months by the same investor) and passive investments (ie, certain investments that the investor undertook not to proactively participate in the management or to take control of the company). If the fast-track option is applied, the waiting period will be further reduced to five business days.

On the other hand, if the authority finds that there needs to be a review procedure on whether the investment is likely to impair the national security, impede public order or hamper the protection of public safety, the waiting period can be extended up to five months.

- 12** Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?

As explained in question 11, an investor may not make an investment for which prior notification is required for the relevant waiting period. If an investor makes an investment in violation of such a time restriction, the investor will be subject to criminal penalties including imprisonment of up to three years or a fine, or both, of up to three times the amount of the investment or ¥1 million, whichever is higher.

- 13** Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?

The Bank of Japan accepts general inquiries in relation to filing procedures under the Forex Act via the telephone.

The Ministry of Finance and other relevant ministries are generally open for pre-filing consultation if there are any substantive inquiries. Although such a pre-filing consultation is voluntary, it is recommended for an investor to conduct pre-filing consultations, especially if there is any ambiguity in terms of the application of relevant laws and regulations.

- 14** When are government relations, public affairs, lobbying or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?

As explained in question 9, applications of prior notifications will be reviewed by the Ministry of Finance and the Minister having jurisdiction over the targeted businesses. As there has only ever been one case where the order for suspension of the investment was issued, the utilising of government relations, public affairs lobbying or other specialists to support the review of the transaction is uncommon. Other than cooperating fully with the review process by the authority such as providing necessary information that is requested or promptly providing answers to the inquiries, there are no other informal procedures to facilitate or expedite clearance.

Again, please note that the waiting period will be expedited as a default rule set by the ordinance as described in question 11.

- 15** What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to review?

There are no post-closing or retroactive powers granted to the authorities to review, challenge or unwind a transaction that was not otherwise subject to review.

Substantive assessment

- 16** What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?

An investment subject to prior notification will be reviewed by the authority on whether the investment is likely to impair national security, to impede public order, to hamper the protection of public safety or have a significant adverse effect on the smooth management of the Japanese economy. For example, the Ministry of Finance and Ministry of Economy, Trade and Information issued an order to suspend investment by TCI as there was a likelihood that the investment might cause to hamper the protection of public safety.

The onus is on the investor to show the transaction does not fall into any of the above-mentioned categories.

- 17** To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?

The Japanese authorities have continually stressed that restrictions imposed on foreign investments by the Forex Act are consistent with international standard rules such as the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations.

As for a substantive assessment over a specific case, there is no official data or information suggesting that the Japanese authorities will consult or cooperate with officials in other countries.

- 18** What other parties may become involved in the review process? What rights and standing do complainants have?

Before issuing an order to suspend or change the content of an investment, the relevant ministers are required to hear opinions from the Council on Customs, Tariff, Foreign Exchange and other Transactions (the Council). The Council shall be comprised of academic experts nominated by the minister of finance. Competitors or customers may not be involved in the review process. There are no procedures allowing the complainants to participate, thus, the complainants have no rights and standing.

- 19** What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The Minister of Finance and the Minister having jurisdiction over the targeted business have the power to order investors to suspend or change the content of the investment, but only upon the refusal by the investor for the recommendation made by the relevant ministers to suspend or change the content of the investment.

- 20** Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings?

There are no ways of avoiding the authorities' recommendations or orders that object to a transaction within the review process under Forex Act, other than regular advocating activities. It should be noted, however, that the decision by the authority can be challenged as explained in question 21.

21 Can a negative decision be challenged?

A negative decision can be challenged. A party can make an appeal to the relevant ministry challenging the orders rendered by the authority to sustain or change the content of the investment. The ministry receiving a motion of appeal is required to hold a public hearing after giving a reasonably lengthy advance notice.

The party who is dissatisfied with the decision by the relevant ministry in appealing procedure may opt to bring an action to court.

22 What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

Under the National Public Service Act, government officials owe a confidentiality obligation for the confidential information of which the officials become aware in the course of their duties. As such, any confidential information provided to the government officials in the foreign investment review process will be subject to such an obligation. If an official breaches his or her confidentiality obligation, he or she can incur a criminal penalty of imprisonment up to one year or a fine of up to ¥500,000. The party may claim for damages against Japanese government, incurred by the dissemination of confidential information, as long as the required elements under the State Redress Act, for example, an intentional act or an act due to the negligence of an official can be established.

Update and trends

As a result of the present growing diplomatic tension in the East Asia region, there is a continuing debate in Parliament as to whether restrictions over the foreign ownership of certain lands (which are important for national security, such as lands adjacent to the military base of the Self Defence Force or lands in a remote isolated island) need to be implemented. It is reported that the government is considering proposing a new bill at the next regular session of the Parliament, which is scheduled to be convened in the first half of 2014. As the debate is at the preliminary stage, the scope or the effect of the regulation is still unknown.

Recent cases**23** Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

As explained in question 1, there has been only one instance since the enactment of the current Forex Act in 1980 where the order to sustain the investment was actually issued, although hundreds of prior notifications of the direct inward investment have been filed each year (see question 1 for the details of the order for the suspension of the investment issued in 2008 against the proposed investment by TCI in J-Power).

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