RESTRICTIONS ON FOREIGN INVESTMENT: DEVELOPMENTS IN JAPANESE LAW

Misao Tatsuta

MR. HAWES: Now, I would like to have Mr. Misao Tatsuta from Kyoto tell us about the Japanese situation.

MR. TATSUTA: Thank you, Doug. Since the age of the gods, Japan has repeatedly opened and closed its door. According to legend, sunshine returned to our ancestors when the Goddess of the Sun peeped through a crack by the rock door of a cave where she had locked herself. After three hundred years of isolation under the Shogun, Japan opened its door wide and achieved rapid modernization in the twentieth century--thanks to the advanced civilization and technologies of the Western countries.

Japanese entrepreneurs, however, found it difficult to launch their own ventures. When the time was ripe in terms of the national economy, they found that foreign capital and technology already controlled the main industries, and markets were hard to enter [1]. This pre-war experience prompted our country to maintain a restrictive policy toward foreign investment in post-war times, when our economy had to be rebuilt from almost nothing.

1. EXCLUSIONARY LAW AND ITS DEMISE

The Foreign Investment Law of 1950 [2] prohibited the inflow of foreign capital but made exceptions for selected desirable investments [3]. Gradually the exceptions were broadened, especially after 1964 when Japan joined the OECD [4]. In May 1973, the government replaced the previous fifty-fifty principle for foreign capital investment with a one hundred percent liberalization [5], in accordance with the OECD Code. The original statutory structure, however, remained unchanged; and the very existence of this prohibitive statute, combined with its procedural complexity, gave the impression that Japan still maintained a closed-door policy. Criticism from abroad grew louder as overseas activities by Japanese enterprises attracted more attention.

The Foreign Investment Law was finally abolished and replaced by the Foreign Exchange and Foreign Trade Control Law of 1979 [6], which took effect December 1, 1980. This new statute reversed the former exception-to-the-rule emphasis and imposed restrictions only in exceptional cases. Rules and regulations under the statute provided for streamlined procedures [7]. For example, a written contract and its time-consuming translation are no longer required with an application for validation. Furthermore, notification procedures are now free from conditions or terms formerly imposed through the exercise of administrative guidance.
2. ACQUISITION OF SHARES BY ALIENS

Under the new regime acquisitions of corporate shares by foreigners are classified according to three categories: (1) portfolio investment, (2) direct domestic investment, and (3) acquisition of controlling ownership.

A. Portfolio Investment

When a non-resident's holding, after purchase, is less than ten percent of the aggregate outstanding shares in a listed corporation, such purchase is denominated portfolio investment [8]. This type of transaction is subject to a notice requirement and a twenty day waiting period [9]. Practically speaking, however, these requirements can be disregarded since insofar as the purchase is made through a designated securities company there is no need to notify the Finance Minister of the transaction [10]. There are twenty-six designated securities companies, including four foreign brokers [11].

It is true that in emergency cases (such as those specified in article 7 of the OECD Code) the Finance Minister may impose special regulations [12]. However, in its policy announcement of December 16, 1980 [13], the Foreign Exchange Council emphasized that resort to such emergency regulations should be confined to a necessary minimum, and that international harmony should always be borne in mind.

B. Direct Domestic Investment

Direct domestic investment occurs when a foreign investor's holding after purchase will be ten percent or more of the aggregate outstanding shares in a listed corporation, or when a foreign investor plans to acquire any number of shares in an unlisted corporation [14]. Prior to this type of transaction, the buyer must file a notification statement with the Minister in charge of the industry involved. A statutory waiting period of thirty days follows, but it may be accelerated in normal circumstances to about fifteen days [15]. The same requirements apply if a foreign company wishes to establish a branch or make a substantial change in its business [16]. If the government finds it necessary to determine whether the transaction might imperil the national security or cause substantial adverse effects in related Japanese industries, the waiting period may be extended to five months. And if the government decides that it is probable that these adverse consequences will take place, it may order the transaction altered or suspended [17].

The Cabinet Decision of December 26, 1980 states that with regard to direct domestic investments the government shall administer the Foreign Exchange and Foreign Trade Control Law in accordance with the OECD Code [18]. It directs, furthermore, that for the moment the government shall continue to deal cautiously with direct domestic investments in primary industries (i.e., agriculture, forestry and fisheries, mining, oil, leather, and leather products manufacturing) while it maintains efforts to loosen restrictions on investments in these industries in response to future variations in the social and economic circumstances of the country [19].
C. Acquisition of Controlling Ownership

With respect to acquisition of controlling ownership, the government retains the power to screen acquisition of corporate shares by foreigners through the selection of certain issuers for special treatment. The government may designate issuers for this special screening process if it seems necessary to determine whether share holdings of twenty-five percent or more by foreigners might imperil the national security, disturb the maintenance of public order, hamper the protection of public safety, or cause substantial adverse effects in the national economy [20].

There were hot debates on whether this sort of regulation should be retained. The argument that prevailed was as follows: those who have been accustomed to the previous regime still need time to prepare themselves for its complete dismantlement [21]. Since this rationale seems to be less than indisputable, the special control continues "for the time being" only and is specified not in the body of the law, but in supplementary provisions [22]. It would be fair to say that the Cabinet Decision of December 26, 1980 [23] (which I have mentioned in connection with direct domestic investment) applies to this restriction—that is, the government must make efforts to liberalize acquisition of controlling ownership, as well as lesser purchases, in the primary industries. Under the old regime, one of the tests for a case-by-case scrutiny was whether the incumbent management consented to the foreigner's acquisition. Under the present statute, however, designation may be made irrespective of management approval.

In an announcement on November 28, 1980 [24], the government designated eleven corporations [25] for this special screening process. It is reported that a Hong Kong investor who has a substantial holding in one of these corporations, Katakura Industries Co., brought a suit against the Japanese government alleging that the selection of that company was unwarranted and therefore unlawful [26]. We are much concerned about the outcome of this suit.

A foreigner who plans to acquire shares in a designated corporation must first use a resident agent to file a confirmation request with the Minister of Finance, via the Bank of Japan. Within forty days prior to the planned transaction, the foreigner must obtain a confirmation declaring whether or not the planned acquisition falls within the shareholding limit [27]. In addition to the confirmation request, the foreigner must file a notification statement in the same manner [28]. If the Minister finds it necessary to determine if the acquisition might cause one of the adverse effects that I mentioned earlier, the planned transaction is subject to the same process of review that is used with a direct domestic investment [29].

3. OBSTACLES TO A TAKEOVER

Once a foreigner has cleared the hurdle of foreign investment restrictions, he or she toes the line along with domestic investors. Issuers may not restrict the transfer of listed shares due to self-regulation by stock exchanges [30]. There are, however, several obstacles for an investor, domestic or foreign, to overcome before gaining control of a target company.
A. Tender Offer Legislation

The tender offer provisions in the Securities and Exchange Law tend to support incumbent management. A buyer must file a tender offer statement with the Finance Minister and then observe a ten-day waiting period. During this time, a copy of the statement is sent to the target company [31]. These rules resemble some state tender offer statutes in the U.S. [32].

B. Stock Exchange Reporting Requirements

If the stock exchange suspects that a buyer is secretly purchasing a substantial number of shares, which might cause extraordinary price movement in a particular stock, the exchange may require special reporting of such stock. Member firms are then obliged to report the details of transactions in that stock. When the exchange deems it necessary, it gives member firms relevant information about the stock [33]. Thus, it becomes difficult to buy the stock anonymously.

This rule originated to cope with a maneuver in which a purchaser would acquire a large holding—thereby driving up the price—and would then try to sell the shares to management at the heightened price. The buyer's intention to sell rather than to acquire is, however, hard to prove. Therefore, the rule may be applied in various situations; and it may often have the effect, perhaps contrary to the stock exchange's intent, of tipping the scales in favor of the incumbent management.

C. Cumulative Voting

Under the Commercial Code, as amended in 1974, cumulative voting is not mandatory [34], and virtually all corporations have adopted charter provisions that dispense with it. Thus, it is almost impossible for minority shareholders to have representatives on the board of directors.

D. Qualification of Directors

The former attitude of Japanese management toward foreign participation is exemplified by the following case. In 1968, Toyota Motor Co., Ltd. added a new provision to its charter requiring that directors and supervisors be of Japanese nationality. A Japanese shareholder brought an action alleging that the charter amendment was void, but the district court held that a nationality requirement was not unreasonable discrimination in contravention of the equal protection clause of the constitution. Furthermore, it was held that such matters should be left to corporate autonomy [35]. The plaintiff did not appeal, and contemporary commentators supported the court's decision. Such discrimination is, however, obviously inconsistent with the national policy of liberalizing capital movements; and it is doubtful that a court would render the same opinion today. At any rate, Toyota subsequently deleted the charter provision in question, and I do not know of any corporation that currently has such a provision.
4. ADMINISTRATIVE GUIDANCE

The Japanese government is widely known—or notorious—for its extensive use of so-called "administrative guidance". By means of this technique the government can attain its policy goals without explicit statutory authority [36]. This has both advantages and disadvantages. It insures the governmental flexibility that is needed for quick response to changing circumstances; and it can reinforce self-regulation by encouraging each industry to attain moral standards higher than the statutory minimum. Sometimes the government avoids coercive measures by issuing warnings or recommendations first, so that an innocent violator may comply without losing face. By and large, government officials are capable, industrious, and honest. In most cases they can be relied upon to select appropriate administrative techniques.

On the other hand, administrative, or non-statutory, guidance obscures the border between what can be done and what cannot be done. This results in a low measure of clarity and predictability. It may happen that the officials in charge are so concerned with their own regulatory business that they lose a broader perspective. For example, MITI's [37] administrative guidance could possibly conflict with the FTC's [38] competition policy [39].

Several years ago, the Hong Kong investor whom I mentioned earlier tried to purchase a block of shares in a leading paper manufacturing company. It was reported that the Securities Bureau of the Ministry of Finance advised brokers not to accept buy orders from him [40]. This is one of the shameful examples of administrative guidance. When this investor purchased Katakura shares, however, the Securities Bureau did not repeat its folly, and I believe such mistakes will be avoided in the future.

Even with respect to domestic matters, criticism has been increasing against the official habit of resorting to administrative guidance [41]. In the context of international business—where foreigners are not familiar with this Japanese technique—our government should refrain from using administrative guidance. Even the wise exercise of non-statutory guidance has the potential to evoke misunderstanding and mistrust.

5. FUTURE POTENTIAL

The new regime that was launched last December attains, both in form and in substance, a level of liberalization that is consistent with the OECD Code of Liberalization of Capital Movements [42]. The only area open to question is our transitional restriction on acquisition of controlling ownership. We have to guard against any unwarranted designation of issuers [43], and we must seek to have this special restriction discarded as soon as possible.

At the same time, I hope that foreign investors will conduct adequate investigations before entering the Japanese market. It is unfortunate and unfair if they regard some of our business practices as discriminatory just because they are unfamiliar with them. For instance, the obstacles to a takeover that I have mentioned are not limited to foreign investors; domestic investors as well find it difficult to take over an existing enterprise. They face resistance not only from management, but also from the employees at large.
Employees regard their jobs as life-long positions and feel as though they belong to a family. They are likely to be resentful of an invasion from outside the company; and customers and suppliers have similar feelings. These facts cannot be altered by legislation or government policy.

Without a willingness to be integrated into this type of environment—which takes considerable time—emissaries from abroad, even with a deep pocket, are not likely to be successful in conducting continuous business in Japan [44]. I hope that the door will always remain open; so that together, hand in hand in our islands, we may enjoy the sunshine given by the Goddess of the Sun.

NOTES

[1] For example, the market for soda and other chemical products was dominated by English and German products until World War I. Toyo Keizai Shinposha (ed.), Nippon No Kaisha Hyakunenshi (Hundred Years of Japanese companies 196 (1975). Also, when the predecessor of Toshiba Electric Co. entered the electric bulb market at the beginning of this century, it could not compete with foreign products and could not refrain from forming a joint venture with General Electric Co. Seki (ed.), Toshiba Hyakunen shi (Hundred years of Toshiba Electric Co.) 24-25 (1977). One of the reasons why foreign products dominated Japanese markets was, in addition to the fact that domestic technologies were underdeveloped, that Japan did not have the power to fix tariffs on its own initiative until 1911. 1. Takahashi, Nippon Kindai Keizai Rattatsu shi (Development of Japanese modern economy) 204-218 (1973).


[3] Every foreign investment was dependent upon the validation which was granted through case-by-case scrutiny by the government. Foreign Investment Law art. 8 and art. 11.


[5] The Cabinet Decision of June 6, 1967 declared that in certain categories of industry the competent minister would automatically approve an application for direct investment in the form of company formation, if the aggregate foreign holdings did not exceed fifty percent and certain other requirements were met. The Cabinet Decision of April 27, 1973 (Liberalization of Inward Investment) superseded the earlier decision and declared that approval of share acquisitions by foreign investors pursuant to article 11 of the Foreign Investment Law would be given automatically by the competent minister in accordance with the OECD Code, except in case of certain categories of industry.

[6] Gaikokukawase ogobi Gaikokubeki Kanrihō, originally Law No. 228, 1949, as amended by Law No. 65, 1979. This amended law [hereinafter referred to as FECL (Foreign Exchange Control Law)] is appended to this chapter infra at 169.
Foreign Exchange Control Order (Gaikokukawase Kanrizai), Cabinet Order No. 260, 1980 [hereinafter referred to as FEC Order]; Direct Domestic Investment Order (tainai Chokusetsutōshi tō nı kansuru Seirei), Cabinet Order No. 261, 1980 [hereinafter referred to as DDI Order]; Direct Domestic Investment Rule (tainai Chokusetsutōshi tō nı kansuru Meirei), Prime Minister's Office and other Ministries Rule No. 1, 1980 [hereinafter referred to as DDI Rule].

FECL art. 20 item 5, art. 26 para. 2 items 1 and 3: DDI Order art. 2 para. 5.

FECL art. 22 para. 1 item 3, art. 23 para. 1.

FECL art. 22 para. 1 proviso.

The Finance Minister has designated the following firms upon their application pursuant to FEC Order art. 12 para. 7; Foreign Exchange Control Rule (Gaikokukawase no kanri ni kansuru Shōrei), Ministry of Finance Rule No. 44, 1980 art. 12.

Nomura Securities Co.
Nikko Securities Co.
Daiwa Securities Co.
Shin-Nippon Securities Co.
Nippon Kangyo Kakumaru Securities Co.
San-jo Securities Co.
Wako Securities Co.
Okasan Securities Co.
Yamatane Securities Co.
Osakaya Securities Co.
Daichi Securities Co.
Yachiyo Securities Co.
Toyo Securities Co.
Marusan Securities Co.
Koa Securities Co.
Nashonaru Securities Co.
Koyanagi Securities Co.
Toko Securities Co.
Meiko Securities Co.
Tachibana Securities Co.
Nichiei Securities Co.
Merrill Lynch International Bank, Inc., Tokyo and Osaka Branches
Vickers, da Costa & Co., Tokyo Branch
Bache, Halsey, Stuart, Shields, Japan, Ltd., Tokyo Branch
Smith, Barney, Harris, Upham International, Inc., Tokyo Branch


FECL art. 23 para. 2 through 8; FEC Rule art. 13.

Gaikokukawase tō shingikai (Foreign Exchange Council), Yūjikisei ni kansuru kihontekina Kangaekata (Basic policy concerning emergency control), Dec. 16, 1980.
FECL art. 26 para. 2 items 1 and 3; DDI Order art. 2 para 5. "Foreign investor" is defined by FECL art. 26 para. 1 and DDI Order art. 2 paras. 1 and 2.

FECL art. 26 paras. 3 and 4; DDI Order art. 2 paras. 10 through 13; DDI Rule art. 2 paras. 3 and 4. Fukui (ed.), Atarashii gaikokukawase kanrihō no kaisetsu (Explanation of the new Foreign Exchange Control Law) 53 (1980).

FECL art. 26 para. 2 items 4 through 7; DDI Order art. 2 paras. 6 through 9.

FECL art. 27 paras. 1 through 4 and 7; DDI Order art. 3.


These industries (as well as retail trade operations) were listed in Annex 1 to the Cabinet Decision of April 27, 1973, supra note 5, in order to indicate that the acquisition of shares of an enterprise, either newly established or existing, which belongs to any of these industries would continue to be treated as before, i.e., to be screened on a case-by-case basis.

FECL Supplementary Provisions art. 2; DDI Order art. 7 paras. 4 and 5. This restriction applies to acquisition of shares by individual non-residents, corporations, and other organizations established pursuant to foreign law or headquartered abroad.


See supra note 20.

See supra note 18.

Gaikokukawase oyobi Gaikokubēki Kanrihō narabini Tainai Chokusetsutōshi tō ni kansuru Seirei ni motozuki Shinsa no Taishō to subeki Kaisha oyobi Tokutei no Kaisha ni tsuite tokunin Hitsuji ga aru to mitome sadameru Ritu o sadameru Ken (Re-designation of corporations subject to the screening process and designation of ceilings for foreigners' holdings of shares in certain corporations pursuant to the Foreign Exchange and Foreign Trade Control Law and the Direct Domestic Investment Order), Announcement No. 1, 1980, Ministry of Finance; Ministry of Public Welfare; Ministry of Agriculture, Forestry and Fishery; and Ministry of International Trade and Industry.

The designees and respective ceilings are as follows (blanks show that the ceiling is 25 percent):

<table>
<thead>
<tr>
<th>Designated Issuer</th>
<th>Ceiling in Percentage</th>
</tr>
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<tbody>
<tr>
<td>Sankyo Co.</td>
<td>-</td>
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<tr>
<td>Katakura Industries Co.</td>
<td>-</td>
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<tr>
<td>Arabian Oil Co.</td>
<td>-</td>
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<tr>
<td>Fuji Electric Co.</td>
<td>26</td>
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<tr>
<td>Hitachi Ltd.</td>
<td>30</td>
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<tr>
<td>Tokyo Keiki Co.</td>
<td>32</td>
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<tr>
<td>General Sekiyu K.K.</td>
<td>49</td>
</tr>
<tr>
<td>Showa Oil Co.</td>
<td>50</td>
</tr>
</tbody>
</table>

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Designated Issuer | Ceiling in Percentage
---|---
Mitsubishi Oil Co. | 50
Toa Nenryo Kogyo K.K. | 50
Koa Oil Co. | 50


[27] FECL Supplementary Provisions art. 2 para. 3; DDI Order art. 8 paras. 5 and 6; Ministerial Rule Concerning Confirmation of Stock Acquisitions by Individual Non-residents and the like (Nikyōjūsha dearuru Kojin tō ni yoru Kabushiki tō no Shutoku no Kakunin tō ni Kansuru Shōrei), Ministry of Finance Rule No. 46, 1980.

[28] FECL Supplementary Provisions art. 3 para. 1; DDI Order art. 8 paras 1 through 4; DDI Rule art. 4.

[29] FECL Supplementary Provisions art. 4 paras. 5 and 6; DDI Order art. 9.

[30] E.g., Tokyo Stock Exchange, Criteria for Stock Listing (Kabuken jōjō shinsa kijun) art. 2 para. 1 item 10; *id.*, Criteria for Delisting of Listed Stock (Kabuken jōjō haishi kijun) art. 2 para. 1 item 11.


[33] E.g., Tokyo Stock Exchange, Rule Concerning Stock to be Reported with Special Requirements (Tokubetsu hōkoku meigara ni kansuru Kisoku), Oct. 11, 1978.

[34] Commercial Code (Shōhō) Law No. 48, 1899, art. 256-3 para. 1. Prior to the 1974 amendment, cumulative voting was mandatory if holders of one-quarter of the aggregate outstanding shares requested it.


[38] Fair Trade Commission (Kōsei torihiki iinkai) in charge of administering the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Shiteki dokusen no kinshi oyobi Kōsei torihiki no kakuno ni kansuru Horitsu), Law No. 54, 1947.

[40] Kyū, Honkon no Chōsen (Challenge from Hong Kong), Chūō kōron, Nov., 1980, at 266-267.


[43] Daiwa Un'yu K.K., a trucking firm, failed to be designated as the twelfth corporation (supra note 25), due to reluctance on the part of the Finance Ministry, though the Transportation Ministry supported the company's position. The Katakura litigation (supra note 26) may have some effects on the government policy. Nippon Keizai shim bun (Japan Economic Journal), June 3, 1981, at 1.

APPENDIX XII
FOREIGN EXCHANGE AND FOREIGN TRADE
CONTROL LAW (FECL)

CHAPTER V DIRECT DOMESTIC INVESTMENTS, ETC.

(Notice, etc., of direct domestic investments, etc.)

Article 26. A "foreign investor" shall mean any one of those mentioned below, which performs any one of the direct domestic investments, etc., mentioned in each Item of the next Paragraph:

1. A natural person who is a non-resident;

2. A juridical person or other organization established under foreign legislation, or a juridical person or other organization having its main office in a foreign country;

3. A company of which the number of stock or the amount of capital subscription directly owned by one or more of those mentioned in Item (1) and/or the preceding Item, and/or the number of stock or the amount of capital subscription designated by a Cabinet Order as being indirectly owned by the above-mentioned through another company or other companies, equal(s) or exceed(s) in the aggregate one-half (1/2) of that company's total stock issue or total subscribed capital; or

4. Other than those mentioned in the preceding two Items, a juridical person or other organization of which a majority number of board members (which mean directors and other similar posts, which shall apply in this Item) or board members having representing power is occupied by persons mentioned in Item (1).

2. A "direct domestic investment, etc." shall mean an act which falls under any Item below:

1. Acquisition of any company's stock or share (except for the acquisition by transfer from any one mentioned in each Item of the preceding Paragraph, and the acquisition of the stock of companies which is listed on the stock exchange defined by Article 2, Paragraph 11 of the Securities and Exchange Law, or the stock of companies which is designated by a Cabinet Order as being similar to the aforementioned listed one—collectively referred to as "listed companies, etc." in the next Item and Item (3)—);

2. Transfer of stock or share(s) of any company other than the listed companies, etc., which was/were acquired by the transferer prior to his acquisition of non-resident status and has/have been continuously held by him up till the time of the transfer (limited to only such transfer as made by a non-resident natural person to any one mentioned in each Item of the preceding Paragraph);

3. Acquisition of stock of any one of the listed companies, etc. (limited to only such instances whereunder either the ratio of the number of stock of a given company acquired by a given transaction against that company's total stock issue, or the aggregate ratio of the total number of stock of a given company which becomes to be possessed by an acquirer after a given act of acquisition plus the number of stock of the same company possessed by the juridical person or other organization designated by a Cabinet Order as having a special relationship with the acquirer through stock or share holding or other similar ways against that company's total stock issue equals or exceeds a ratio determined by a Cabinet Order which shall be not less than ten-hundredth (10/100));
3. Any foreign investor who wants to make a direct domestic investment, etc., mentioned in any Item of the preceding Paragraph (except for those cases determined by a Cabinet Order, in consideration of such instances as inheritance, legacy, amalgamation of juridical persons, etc.) shall give a prior notice, as a Cabinet Order provides for, to the Minister of Finance and the Minister(s) in charge of the industry involved of those matters designated by the Cabinet Order such as the objective of the business, amount, time of execution, and others concerning that direct domestic investment, etc.

4. Any foreign investor who has given a notice under the provisions of the preceding Paragraph concerning the direct domestic investment, etc., mentioned in Paragraph 2 (hereinafter referred to as "direct domestic investment, etc.,") shall not execute that direct domestic investment, etc., until a period of thirty (30) days has elapsed, counting from the day of receipt of the notice by the Minister of Finance and the Minister(s) in charge of the industry involved. However, the Ministers may shorten this period when they deem it not specifically harmful, judging from the objective of the business, etc., of the direct domestic investment, etc., under notice.

5. Any person other than a foreign investor (including a juridical person or other organization, which shall also apply to Paragraph 1 of the next Article) who performs any transaction or act tantamount to a direct domestic investment, etc., on behalf of a foreign investor but not in the latter's name shall be deemed as a foreign investor, and the provisions of the preceding two Paragraphs shall apply to such a person.

(Article 27. When a notice is given to the Minister of Finance and the Minister(s) in charge of the industry involved under the provisions of Paragraph 3 of the preceding Article (including a notice given by a person other than a foreign investor who is deemed as a foreign investor under the provisions of Paragraph 5 of the same Article, which shall also apply to the next paragraph and Paragraph 8), and the Ministers deem it necessary to make an inquiry in order to determine whether the direct domestic investment, etc., under notice, if executed, would cause apprehensions as to the occurrence of any of the consequences mentioned in Item (1) or (2), or whether the direct domestic investment, etc., under notice falls under Item (3) or (4), the Ministers may extend the period during which the execution of that direct domestic investment, etc., is prohibited up to four (4) months, counting from the day of their receipt of the notice:

[368]
(1) It might imperil the national security, disturb the maintenance of public order, or hamper the protection of the safety of the general public;
(2) It might adversely and seriously affect activities of our business enterprises engaging in a line of business similar or related to the one to which the direct domestic investment, etc., is to be made, or the smooth performance of our national economy;
(3) Because it is made by a foreign investor with whose country no treaties or other international agreements are concluded by our country in regard to the direct domestic investments, etc., its particulars are required to be altered, or its execution is required to be suspended, so as to make conditions substantially equal to those allowed to our national's direct investment activities (which mean those tantamount to direct domestic investment, etc., mentioned in each Item of Paragraph 2 of the preceding Article) in that country; or
(4) When seen from its purpose of the use of funds and others, it falls under, in whole or in part, the capital transactions upon which an obligation to obtain a license is imposed under the provisions of Article 21, Paragraph 2, and therefore its particulars are required to be altered, or its execution is required to be suspended.

2. When a notice is given to the Minister of Finance and the Minister(s) in charge of the industry involved under the provisions of Paragraph 3 of the preceding Article, the Ministers deem that, if the direct domestic investment, etc., under notice were executed, it would cause apprehensions as to the occurrence of any one of the consequences mentioned in Item (1) or (2) of the preceding Paragraph, or that the direct domestic investment, etc., under notice falls under Item (3) or (4) of the same Paragraph, they may, upon hearing the opinion of the Committee on Foreign Exchange and Other Transactions mentioned in Article 55-2, recommend the party which gave that notice, as a Cabinet Order provides for, either to alter the particulars of that direct domestic investment, etc., or to suspend the execution thereof, provided that such a recommendation is given within the period mentioned in the same Paragraph, or within the extended period provided in the next Paragraph, counting from the day of their receipt of the notice.

3. When the Committee on Foreign Exchange and Other Transactions mentioned in Article 55-2 is asked for its opinion for the inquiry provided in Paragraph 1, and tenders its intimation that to form its opinion within the period of four (4) months as provided in the same Paragraph is difficult due to the nature of the subject matter, the period provided in the same Paragraph during which the execution of the direct domestic investment, etc., is prohibited shall become five (5) months, irrespective of the provisions of the same Paragraph.

4. The party who is given recommendation under the provisions of Paragraph 2 shall inform the Minister of Finance and the Minister(s) in charge of the industry involved whether it accedes to the recommendation or not within a period of ten (10) days, counting from the day of its receipt of the recommendation.

5. The party which has informed its accession to the recommendation under the provisions of the preceding Paragraph shall execute the direct domestic investment, etc., concerning the recommendation in accordance therewith.

6. The party which has informed its accession to the recommendation under the provisions of Paragraph 4 may execute the direct domestic investment, etc., concerning the recommendation, before a period of four (4) months (or five (5) months when the period is extended under the provisions of Paragraph 3) has elapsed, counting from the day when he gave the notice thereof, irrespective of the provisions of Paragraph 1 or Paragraph 3.
7. When the party which has been given recommendation under the provisions of Paragraph 2 either fails to inform or informs its non-accession thereto under the provisions of Paragraph 4, the Minister of Finance and the Minister(s) in charge of the industry involved may direct it to alter the particulars of the relevant direct domestic investment, etc., or to suspend the execution thereof, provided that such a directive is served within the period provided in Paragraph 1 or the extended period provided in Paragraph 3, counting from the day of their receipt of the notice thereof.

8. When the Minister of Finance and the Minister(s) in charge of the industry involved deem that, due to the change of economic situations or any other reason, apprehensions as to the occurrence of the consequences mentioned in Item (1) or (2) of Paragraph 1 cease to exist even if the direct domestic investment, etc., notified under the provisions of Paragraph 3 of the preceding Article were executed, or that the direct domestic investment, etc., under notice ceases to be considered as falling under Item (3) or (4) of the same Paragraph, they may withdraw, in whole or in part, their recommendation to alter the particulars of the said direct domestic investment, etc., given to the party who has informed its accession thereto under the provisions of Paragraph 4, or their directive to alter such particulars served under the provisions of the preceding Paragraph.

9. In addition to those provided in each of the preceding Paragraphs, a Cabinet Order shall provide for the procedures of the recommendation to alter the particulars of the direct domestic investment, etc., or to suspend the execution thereof, and other necessary matters concerning the recommendation.

Supplementary Provisions

(Date of coming into force)

Article 1. The date of the coming into force of this Law shall be determined article by article by Cabinet Orders, which shall be not later than June 30, 1950.

(Special rules regarding acquisition of stock by non-resident natural persons, etc.)

Article 2. For the time being, when the Minister of Finance and the Minister(s) in charge of the industry involved deem it necessary to make an inquiry in order to determine whether apprehensions as to the occurrence of any of the below-mentioned consequences might ensue from the possession of certain company's stock, etc., in excess of a certain quantity (which mean the stock of the listed companies, etc., mentioned in Article 26, Paragraph 2, Item (1), and other securities designated by a Cabinet Order, which shall apply hereinafter) by any non-resident natural person, and/or juridical person or other organization established under foreign legislation, and/or juridical person or other organization having its main office in a foreign country (hereinafter collectively referred to as "non-resident natural persons, etc."), the Ministers may designate, as a Cabinet Order provides for, certain companies which issue such stock, etc., as those subject to such an inquiry:

1. It might imperil the national security, disturb the maintenance of public order, or hamper the protection of the safety of the general public; or
2. It might adversely and seriously affect the smooth performance of our national economy.

2. "The Minister(s) in charge of the industry involved" given in the preceding Paragraph shall be the one determined by a Cabinet Order as being in charge of the business being carried out by a company, of which stock, etc., is to be acquired as mentioned in the same Paragraph.
3. "Stock, etc., in excess of a certain quantity" given in Paragraph 1 shall mean stock, etc., of a certain company of which the number (in the case of stock, the number thereof, and in the case of other securities, the number thereof translated into a stock equivalent in accordance with a formula provided by a Cabinet Order, which shall apply in this Paragraph) already possessed by non-resident natural person(s), etc. (including those possessed by any person—including a juridical person or other organization, which shall apply hereinafter—other than non-resident natural persons, etc., on behalf of the latter but not in the latter's name, and excluding those having been acquired by any non-resident natural person, etc., prior to his acquisition of non-resident status and continuously possessed thereafter), plus the number of stock, etc., of the same company to be newly acquired by any non-resident natural person, etc. (including those to be acquired by a person other than a non-resident natural person, etc., on behalf of the latter but not in the latter's name) equals or exceeds a ratio determined by a Cabinet Order which shall be not less than twenty-five-hundredth (25/100) of that company's total stock issue.

Article 3. When the designation of companies has been made under the provisions of Paragraph 1 of the preceding Article, and any non-resident natural person, etc., is to acquire thereafter stock, etc., in excess of the certain quantity of any one of such designated companies (except for the acquisition of stock of the listed companies, etc., mentioned in Article 26, Paragraph 2, Item (3)), he shall, unless a Cabinet Order otherwise provides for, give a prior notice, as a Cabinet Order provides for, to the Minister of Finance and the Minister(s) in charge of the industry involved of those matters as designated by the Cabinet Order such as the quantity of stock, etc., to be acquired and others, and for such acquisition the provisions of Article 22, Paragraph 1 shall not apply.

2. Any non-resident natural person, etc., who is to acquire stock, etc., of any company designated under the provisions of Paragraph 1 of the preceding Article shall request the Minister of Finance, as a Cabinet Order provides for, to confirm whether or not the intended acquisition falls under the stock, etc., in excess of certain quantity as mentioned in the same Paragraph.

3. Any non-resident natural person, etc., who has given a notice under the provisions of Paragraph 1 concerning his acquisition of stock, etc., in excess of the certain quantity as mentioned in Paragraph 3 of the preceding Article, shall not acquire the stock, etc., in excess of the certain quantity, under notice, until a period of thirty (30) days has elapsed, counting from the day of receipt of the notice by the Minister of Finance and the Minister(s) in charge of the Industry involved. However, the Ministers may shorten this period when they deem it not specifically harmful, judging from the quantity of the stock, etc., to be acquired in excess of the certain quantity and other matters mentioned in the notice.

4. When any person other than a non-resident natural person, etc., is to acquire stock, etc., in excess of the certain quantity on behalf of the latter but not in the latter's name, the former person shall be deemed as a non-resident natural person, etc., and the provisions of the preceding three Paragraphs shall apply to such a person.

5. When a notice is given to the Minister of Finance and the Minister(s) in charge of the industry involved under the provisions of Paragraph 1 (including a notice given by a person other than a non-resident natural person, etc., who is deemed as a non-resident natural person, etc., under the provisions of the preceding Paragraph, which shall apply also to the next Paragraph), and the Ministers deem it necessary to make an inquiry in order to determine
whether the acquisition of stock, etc., in excess of the certain quantity, if
made, would cause apprehensions as to the occurrence of any consequences men-
tioned in either Item of Paragraph 1 of the preceding Article, they may extend
the period during which the acquisition thereof is prohibited up to four (4)
months, counting from the day of their receipt of the notice.

6. The provisions of Article 27, Paragraph 2 through Paragraph 7, and
Paragraph 9 shall be applicable mutatis mutandis to the notice given under the
provisions of Paragraph 1, and a Cabinet Order shall provide for the techni-
calities of such mutatis mutandis application.

Article 4. When any person other than a non-resident natural person, etc.,
is to acquire any stock, etc., on behalf of the latter but not in the latter's
name (except for the acquisition of the stock, etc., falling under the provi-
sions of Paragraph 4 of the preceding Article), the former person shall, unless
a Cabinet Order otherwise provides for, give a prior notice to the Minister
of Finance, as a Cabinet Order provides for, of those matters as designated
by the Cabinet Order such as the quantity of the stock, etc., to be acquired
and others.