

外国為替及び外国貿易法第二十八条の二第一項の規定に基づき、財務大臣及び事業所管大臣が定める特定取得が国の安全に係る特定取得に該当しないための基準を定める件

Public Notice Specifying Conditions to Be Complied With So That Specified Acquisition Does Not Fall Within the Category of Specified Acquisition Involving National Security, Which Are Specified by the Minister of Finance and the Competent Minister for the Business, Pursuant to the Provisions of Article 28-2, Paragraph (1) of the Foreign Exchange and Foreign Trade Act

(令和二年内閣府、総務省、財務省、文部科学省、厚生労働省、農林水産省、経済産業省、国土交通省、環境省告示第七号)

(Public Notice of the Cabinet Office, Ministry of Internal Affairs and Communications, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labour and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, Ministry of Land, Infrastructure, Transport and Tourism, and Ministry of the Environment No. 7 of 2020)

外国為替及び外国貿易法第二十八条の二第一項の規定に基づき、財務大臣及び事業所管大臣が定める特定取得が国の安全に係る特定取得に該当しないための基準を定める件

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(定義)

(Definitions)

第一条 この告示において、次の各号に掲げる用語の意義は、それぞれ当該各号に定めるところによる。

Article 1 In this Public Notice, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

一 特定取得 外国為替及び外国貿易法（以下「法」という。）第二十六条第三項に規定する特定取得をいう。

(i) specified acquisition: specified acquisition prescribed in Article 26, paragraph (3) of the Foreign Exchange and Foreign Trade Act (hereinafter referred to as the "Act");

二 外国投資家 法第二十六条第一項に規定する外国投資家をいう。

(ii) foreign investor: a foreign investor prescribed in Article 26, paragraph (1) of the Act;

三 上場会社等 法第二十六条第二項第一号に規定する上場会社等をいう。

(iii) listed company, etc.: a listed company, etc. prescribed in Article 26, paragraph (2), item (i) of the Act;

四 子会社 会社法（平成十七年法律第八十六号）第二条第三号に規定する子会社をいい、外国の法令に基づいて設立された法人その他の団体及び外国に主たる事務所を有する法人その他の団体を除く。

(iv) subsidiary company: a subsidiary company prescribed in Article 2, item (iii) of the Companies Act (Act No. 86 of 2005), excluding a corporation or any other organization established based on the laws and regulations of a foreign country, and a corporation or any other organization which has its principal office in a foreign country;

五 特定対象事業 対内直接投資等に関する命令第三条第一項及び第四条第二項の規定に基づき財務大臣及び事業所管大臣が定める業種を定める件（平成二十九年内閣府、総務省、財務省、文部科学省、厚生労働省、農林水産省、経済産業省、国土交通省、環境省告示第三号）別表に掲げる業種に属する事業をいう。

(v) specified covered business: a business involved in any of the business types that fall within the scope of business types set forth in Appended Table of the Public Notice Specifying Business Types to Be Specified by the Minister of Finance and the Competent Minister for the Business Pursuant to the Provisions of Article 3, Paragraph (1) and Article 4, Paragraph (2) of the Order on Inward Direct Investment (Public Notice of the Cabinet Office, Ministry of Internal Affairs and Communications, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labour and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, Ministry of Land, Infrastructure and Transport, and Tourism, and Ministry of the Environment No. 3 of 2017);

六 親会社 会社法第二条第四号に規定する親会社をいい、外国の法令に基づいて設立された法人その他の団体及び外国に主たる事務所を有する法人その他の団体を除く。

(vi) parent company: a parent company prescribed in Article 2, item (iv) of the Companies Act, excluding a corporation or any other organization established based on the laws and regulations of a foreign country, and a corporation or any other organization which has its principal office in a foreign country;

七 特定親会社 上場会社等又は上場会社等以外の会社（以下「発行会社」という。）の子会社であって特定対象事業を営むもの（以下「特定子会社」という。）の親会社（発行会社を除く。）をいう。

(vii) specified parent company: a parent company of a subsidiary company of a listed company, etc. or of a company other than a listed company, etc. (hereinafter referred to as an "issuing company"), if the subsidiary company operates a specified covered business (hereinafter referred to as a "specified subsidiary company") (the parent company excludes an issuing company);

八 発行会社等 発行会社、特定子会社、特定親会社又は発行会社が財務及び営業若しくは事業の方針の決定に対して重要な影響を与えることができる他の会社として対内直接投資等に関する命令（昭和五十五年総理府、大蔵省、文部省、厚生省、農林水産省、通商産業省、運輸省、郵政省、労働省、建設省令第一号）（以下「命令」という。）第四条第三項に規定する他の会社（子会社を除く。）であって特定対象事業を営むものをいう。

(viii) issuing company, etc.: an issuing company, a specified subsidiary company, a specified parent company, or another company (excluding a subsidiary company) prescribed in Article 4, paragraph (3) of the Order on Inward Direct Investment (Order of the Prime Minister's Office, Ministry of Finance, Ministry of Education, Science and Culture, Ministry of Health and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of International Trade and Industry, Ministry of Transport, Ministry of Posts and Telecommunications, Ministry of Labour and Ministry of Construction No. 1 of 1980) (hereinafter referred to as the "Ministerial Order") as another company on which an issuing company has a material influence in terms of decisions on its financial and operational or business policies, which operates a specified covered business;

九 秘密技術関連情報 発行会社等の特定対象事業を営む部門において秘密として管理されている、技術、技術に関する研究開発の成果、生産方法、部品供給元その他特定対象事業に係る技術又はシステムに関連する情報（発行会社等の役員（法第二十六条第一項第五号に規定する役員をいう。以下この号において同じ。）に係る就業条件、報酬その他の役員に係る情報又は発行会社等の財務状況に係る情報を除く。）をいう。

(ix) secret technology-related information: information on technology, results of research and development related to technology, production methods, or component suppliers, or any other information related to technology or system involved in a specified covered business, which is managed as secret by the division operating the specified covered business at an issuing company, etc. (excluding information concerning officers (officers, prescribed in Article 26, paragraph (1), item (v) of the Act; the same applies below in this item) of an issuing company, etc., such as working conditions and remuneration of officers, etc., or information concerning the financial conditions of an issuing company, etc.)

十 対内直接投資等 法第二十六条第二項に規定する対内直接投資等をいう。

(x) inward direct investment, etc.: inward direct investment, etc. prescribed in Article 26, paragraph (2) of the Act);

十一 金融商品取引業者 金融商品取引法（昭和二十三年法律第二十五号）第二条第九項に規定する金融商品取引業者をいう。

(xi) financial instruments business operator: a financial instruments business operator prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (Act No. 25 of 1948); and

十二 議決権等行使等権限 対内直接投資等に関する政令（昭和五十五年政令第二百六十一号）（以下「令」という。）第二条第四項第一号に規定する議決権等行使等権限をいう。

(xii) authority for exercise, etc. of voting rights, etc.: the authority for exercise, etc. of voting rights, etc. prescribed in Article 2, paragraph (4), item (i) of the Cabinet Order on Inward Direct Investment (Cabinet Order No. 261 of 1980) (hereinafter referred to as the "Cabinet Order").

（特定取得が国の安全に係る特定取得に該当しないための基準）

(Conditions to Be Complied With So That Specified Acquisition Does Not Fall Within the Category of Specified Acquisition Involving National Security)

第二条 法第二十八条の二第一項の規定により法第二十八条第一項の規定による届出をせず特定取得を行った法第二十八条の二第一項に規定する外国投資家が遵守しなければならない基準は、次のとおりとする。

Article 2 The conditions to be complied with by a foreign investor prescribed in Article 28-2, paragraph (1) of the Act that has conducted specified acquisition without making a notification under the provisions of Article 28, paragraph (1) of the Act pursuant to the provisions of Article 28-2, paragraph (1) of the Act are as prescribed below:

一 外国投資家は、当該特定取得に係る発行会社等の取締役（当該発行会社等が持分会社（会社法第五百七十五条第一項に規定する持分会社をいう。）である場合にあっては、業務を執行する社員又は業務を執行する社員の職務を行うべき者をいう。以下この号において同じ。）若しくは監査役に就任し、又は命令第二条第一項第一号イからトまでに掲げる者（自ら又は他のものを通じて株主総会に提出した議案に係る場合にあっては、同項第二号イからヌまでに掲げる者を含み、外国投資家が令第三条の二第一項第三号から第六号までに掲げるものに該当する場合であって、自ら又は他のものを通じて株主総会に提出した議案に係る場合にあっては、命令第二条第一項第三号イ及びロに掲げる者を含む。）を発行会社等の取締役若しくは監査役に就任させてはならない（外国投資家が自ら又は他のものを通じて株主総会に提出した議案に係る場合以外にあっては、会社法第三百四条の規定に基づき、株主総会において提出された議案に係る場合を除く。）。

(i) a foreign investor must not assume office of a director or auditor of an issuing company, etc. involved in the specified acquisition. (if the issuing company, etc. is a membership company (meaning the membership company prescribed in Article 575, paragraph (1) of the Companies Act), a "director" means a member who executes the

business or a person who is to perform the duties of a member who executes the business; hereinafter the same applies in this item), or have any of the persons set forth in Article 2, paragraph (1), item (i), (a) to (g) of the Ministerial Order assume office of a director or auditor of the issuing company, etc. (if the specified acquisition. is relevant to a proposal submitted to the shareholders meeting by the foreign investor itself or via another person, including the persons set forth in item (ii), (a) through (j) of that paragraph; if the foreign investor is any of the persons set forth in Article 3-2, paragraph (1), items (iii) through (vi) of the Cabinet Order, and the specified acquisition. is relevant to a proposal submitted to the shareholders meeting by the foreign investor itself or via another person, including the persons set forth in Article 2, paragraph (1), item (iii), (a) and (b) of the Ministerial Order) (in cases other than the case where the specified acquisition. is relevant to a proposal submitted to the shareholders meeting by the foreign investor by the foreign investor itself or via another person: excluding the case where the specified acquisition. is relevant to a proposal submitted to the shareholders meeting based on the provisions of Article 304 of the Companies Act);

二 外国投資家は、自ら又は他の株主を通じて令第二条第十一项第二号から第四号まで及び命令第二条第二項各号に掲げる議案（対象事業に係るものに限る。）を発行会社の株主総会に提案してはならない。

(ii) a foreign investor must not submit, by the foreign investor itself or via another person, any of the proposals set forth in Article 2, paragraph (11), items (ii) through (iv) of the Cabinet Order and the items of Article 2, paragraph (2) of the Ministerial Order (limited to those regarding the covered business) to the shareholders meeting of an issuing company;

三 外国投資家は、特定対象事業に係る非公開の技術情報の取得その他の当該技術情報の流出につながるおそれのあるものとして次に掲げる行為を行ってはならない。

(iii) a foreign investor must not perform any of the following acts that are likely to lead to the acquisition of undisclosed technology information relevant to the specified covered business or other leakage of the technology information:

イ 秘密技術関連情報であることを知りながら、当該秘密技術関連情報を取得すること（発行会社等が自主的に提供した場合であって、その提供を受けた目的及び条件の範囲内で当該秘密技術関連情報が利用される場合を除く。）

(a) acquiring secret technology-related information while knowing that it is secret technology-related information (excluding the case where an issuing company, etc. has voluntarily provided the secret technology-related information and the information will be used within the scope of the purpose of and conditions for the receipt of the information provided);

ロ 秘密技術関連情報であることを知りながら、当該秘密技術関連情報の自己又は第三者への開示を提案すること

(b) proposing the disclosure thereto or to a third party of secret technology-related information while knowing that it is secret technology-related information; and

ハ 秘密技術関連情報の管理に関する発行会社等の社内規則、取決め、契約その他これらに準ずるものの変更を提案すること（（１）から（３）までに掲げる要件のいずれにも該当することが客観的に明らかである場合又は口に掲げる行為に該当する場合を除く。）

(c) proposing a change to internal rules, agreements, contracts, or anything equivalent thereto of an issuing company, etc. regarding the management of secret technology-related information (excluding the case where it is obviously clear that the proposal satisfies all of the requirements set forth in 1. through 3. or the case where the proposal constitutes the act set forth in (b)):

（１） 法令又は当該発行会社等が一方の当事者となる契約その他の取決めに違反しないこと

1. the proposal does not violate any laws or regulations or any contract or any other agreement to which the issuing company, etc. is a party;

（２） イ又は口に掲げる行為を行うことを容易にしないこと

2. the proposal does not make it easy to perform the act set forth in (a) or (b); and

（３） 秘密技術関連情報の管理を強化すること

3. the proposal strengthens the management of secret technology-related information; and

（特定取得が国の安全に係る特定取得に該当しないための基準の例外）

(Exceptions to Conditions to Be Complied With So That Specified Acquisition Does Not Fall Within the Category of Specified Acquisition Inward Direct Investment, etc. Involving National Security)

第三条 次の各号に掲げる場合にあつては、当該各号に掲げる場合の区分に応じた前条の規定に反しないものとする。

Article 3 In the cases set forth in the following items, a foreign investor does not violate the provisions of the preceding Article according to the categories of cases set forth in these items:

一 法第二十八条の二第一項の規定により法第二十八条第一項の規定による届出をせずに行った直近の特定取得の後に生じた事由により、法第二十七条第一項の規定による届出をして対内直接投資等を行つてはならない期間が満了した後に行う令第二条第十一項第一号に掲げる議案に係る法第二十六条第二項第五号に掲げる同意に係るもの（当該届出に関し法第二十七条第十項の規定に基づき当該対内直接投資等に係る内容の変更若しくは中止を命じられていないもの又は自ら若しくは他のものを通じて提出した議案に係る場合以外のものであって、当該届出に関し虚偽の届出でないものに限る。）又は財務大臣及び事業所管大臣においてやむを得ない事情があると認める場合において、当該発行会社等のうち当該発行会社以外の会社の取締役若しくは監査役に就任することについて法第二十七条第三項第一号イ又は口に掲げるいずれかの事態を生ずるおそれがないと財務大臣及び事業所管大臣が認めたものに係るものを行う場合 前条第一号

(i) if, due to an event that occurs after the most recent specified acquisition conducted without making a notification under the provisions of Article 28, paragraph (1) of the Act pursuant to the provisions of Article 28-2, paragraph (1) of

the Act, the foreign investor conducts inward direct investment, etc. that involves the consent set forth in Article 26, paragraph (2), item (v) of the Act that is relevant to the proposal set forth in Article 2, paragraph (11), item (i) of the Cabinet Order and is given after the expiration of the period during which inward direct investment, etc. must not be conducted, by making a notification under the provisions of Article 27, paragraph (1) of the Act (limited to inward direct investment, etc. regarding which the foreign investor is not ordered to modify the substance of or discontinue the inward direct management, etc. based on the provisions of Article 27, paragraph (10) of the Act in connection with the notification, or inward direct investment, etc. that is not relevant to a proposal submitted by the foreign investor itself or via another person, if the notification is not a false notification), or if the Minister of Finance and the competent minister for the business find unavoidable circumstances, and the foreign investor conducts inward direct investment, etc. that the Minister of Finance and the competent minister for the business finds not to be likely to cause either of the situations set forth in Article 27, paragraph (3), item (i), (a) or (b) of the Act in connection with the assumption of office of a director or auditor at a company other than the issuing company among the issuing company, etc.: item (i) of the preceding Article;

二 法第二十八条の二第一項の規定により第二十八条第一項の規定による届出をせずに行った直近の特定取得の後に生じた事由により、法第二十七条第一項の規定による届出をして対内直接投資等を行ってはならない期間が満了した後に行う令第二条第十一项第二号から第四号まで及び命令第二条第二项各号に掲げる議案に係る法第二十六条第二项第五号に掲げる同意に係るもの（当該届出に関し法第二十七条第十项の規定に基づき当該対内直接投資等に係る内容の変更又は中止を命じられていないものであって、当該届出に関し虚偽の届出でないものに限る。）を行う場合 前条第二号

(ii) if, due to an event that occurs after the most recent specified acquisition conducted without making a notification under the provisions of Article 28, paragraph (1) of the Act pursuant to the provisions of Article 28-2, paragraph (1) of the Act, the foreign investor conducts inward direct investment, etc. that involves the consent set forth in Article 26, paragraph (2), item (v) of the Act that is relevant to any of the proposals set forth in Article 2, paragraph (11), items (ii) through (iv) of the Cabinet Order and the items of Article 2, paragraph (2) of the Ministerial Order and is given after the expiration of the period during which inward direct investment, etc. must not be conducted, by making a notification under the provisions of Article 27, paragraph (1) of the Act (limited to inward direct investment, etc. regarding which the foreign investor is not ordered to modify the substance of or discontinue the inward direct investment, etc. based on the provisions of Article 27, paragraph (10) of the Act in connection with the notification, if the notification is not a false notification): item (ii) of the preceding Article;

三 金融商品取引業者のうち金融商品取引法第二十八条第一項に規定する第一種金融商品取引業（同条第八項に規定する有価証券関連業を行うものに限り、同法第二十九条の四の二第十項に規定する第一種少額電子募集取扱業務のみを行うものを除く。以下同じ。）を行うもの若しくは銀行法（昭和五十六年法律第五十九号）第二条第一項に規定する銀行又はこれらの法令に相当する外国の法令の規定による許認可等（行政手続法（平成五年法律第八十八号）第二条第三号に規定する許認可等又はこれに相当するものをいう。）を受けて第一種金融商品取引業若しくは銀行業（銀行法第二条第二項に規定する銀行業のうち同項第一号に掲げる行為を行わないものを除く。）に類する事業を営むもので、かつ、金融商品取引業等に関する内閣府令（平成十九年内閣府令第五十二号）第七十条の四第一項第二号に掲げる措置と同等の措置（次号において「利益相反管理のための措置」という。）を講じなければならないとされているもの（次号において「第一種金融商品取引業者等」という。）が、発行会社等の同意に基づき当該発行会社等の秘密技術関連情報の自己又は第三者への開示を提案する場合及びかかる提案に基づき当該発行会社等が自主的に提供する秘密技術関連情報を取得する場合 前条第三号イ及びロ

(iii) if a financial instruments business operator engaging in the Type-I financial instruments business prescribed in Article 28, paragraph (1) of the Financial Instruments and Exchange Act (limited to those engaging in the securities-related services prescribed in paragraph (8) of that Article, and excluding those engaging only in the Type-I small amount electronic public offering service prescribed in Article 29-4-2, paragraph (10) of that Act; the same applies hereinafter), a bank prescribed in Article 2, paragraph (1) of the Banking Act (Act No. 59 of 1981), or a person that operates a business similar to the Type-I financial instruments business or banking business (excluding banking business prescribed in Article 2, paragraph (2) of the Banking Act which does not perform the acts set forth in item (i) of that paragraph) with permission, etc. (meaning permission, etc. prescribed in Article 2, item (iii) of the Administrative Procedure Act (Act No. 88 of 1993) or anything equivalent thereto) granted under the provisions of laws and regulations of a foreign country equivalent to these laws, and that is required to take measures equivalent to the measures set forth in Article 70-4, paragraph (1), item (ii) of the Cabinet Office Order on Financial Instruments Business, etc. (Cabinet Office Order No. 52 of 2007) (referred to as "measures for conflict of interest management" in the following item) (hereinafter referred to as a "Type-I financial instruments business, etc." in the following item) proposes the disclosure thereto or to a third party of secret technology-related information of an issuing company, etc. based on the consent of the issuing company, etc., and acquires secret technology-related information voluntarily provided by the issuing company, etc. based on that proposal: item (iii), (a) and (b) of the preceding Article; and

四 第一種金融商品取引業者等であつて、他のもの（他のものから依頼を受けて金融商品取引法第二十八条第一項第三号若しくは第三十五条第一項第十一号若しくは第十二号に掲げる業務又はこれらに相当する業務（以下この号において「投資銀行業務等」と

いう。)を行う場合における当該他のものを除く。)又は当該第一種金融商品取引業者等における同法第二十八条第一項第一号若しくは第五号に掲げる行為若しくはこれらの行為に相当する行為を行う部門(投資銀行業務等を行う部門(以下この号において「投資銀行部門」という。))又は中長期的に利益を得ることを目的として自己の勘定で上場会社等以外の会社の有価証券(同法第二条第一項に規定する有価証券をいう。以下この号において同じ。)の保有及び売買を行うものであって自己の名義で上場会社等の有価証券の保有及び売買を行うものでない部門(以下この号において「自己勘定投資部門」という。))がこれらの行為の一部を行う場合には、当該投資銀行部門又は自己勘定投資部門を除く(自己勘定投資部門がこれらの行為の一部を行う場合にあっては、投資銀行部門及び自己勘定投資部門との間に利益相反管理のための措置を講じている場合に限る。))に秘密技術関連情報を提供しないこと及び発行会社等に対して秘密技術関連情報の自己又は第三者への開示を提案するにあたり当該第一種金融商品取引業者等が所有する株式若しくは持分又は保有する議決権若しくは議決権等行使等権限を直接又は間接に利用しないことを担保するために必要な措置を講じているものが、秘密技術関連情報の自己又は第三者への開示を提案する場合(他のものの依頼を受けて投資銀行部門を通じて投資銀行業務等(同法第二十八条第一項第三号に掲げる業務を除く。))に関して行う提案に限る。)及びかかる提案に基づき当該発行会社等が自主的に提供する秘密技術関連情報を取得する場合(前号に掲げる場合を除く。) 前条第三号イ及びロ

(iv) if a Type-I financial instruments business operator, etc. takes measures necessary to assure that the Type-I financial instruments business operator, etc. will not provide secret technology-related information to another person (excluding another person in the case where the Type-I financial instruments business operator, etc. conducts business set forth in Article 28, paragraph (1), item (iii) or Article 35, paragraph (1), item (xi) or (xii) of the Financial Instruments and Exchange Act or any business equivalent thereto (hereinafter referred to as "investment banking business, etc." in this item)) or to a division of the Type-I financial instruments business operator, etc. that is in charge of performing the acts set forth in Article 28, paragraph (1), item (i) or (v) of that Act or acts equivalent to these acts (if a division engaging in investment banking business, etc. (hereinafter referred to as the "investment banking division" in this item) or a division that holds and trades securities (meaning securities prescribed in Article 2, paragraph (1) of the Financial Instruments and Exchange Act; hereinafter the same applies in this item) of a company other than a listed company, etc. for its own account for the purpose of making profit in the medium to long term and that does not hold or trade securities of a listed company, etc. in its own name (hereinafter referred to as the "proprietary trading division" in this item) performs part of these acts: excluding the investment banking division or proprietary trading division (if the proprietary trading division performs part of these acts, limited to the case where the Type-I financial instruments business operator, etc. has taken measures for conflict of interest measures between the investment banking division and the proprietary trading division)), and to assure that, when proposing the disclosure thereto or to a

third party of secret technology-related information by the issuing company, etc., the Type-I financial instruments business operator, etc. will not directly or indirectly use the shares or equity owned thereby or the voting rights or authority for exercise, etc. of voting rights, etc. held thereby, and the Type-I financial instruments business operator, etc. proposes the disclosure thereto or to a third party of secret technology-related information (limited to a proposal submitted in connection with investment banking business, etc. (excluding the business set forth in Article 28, paragraph (1), item (iii) of that Act) via the investment banking division at the request of another person) and acquires secret technology-related information voluntarily provided by the issuing company, etc. based on that proposal (excluding the case set forth in the preceding item): item (iii), (a) and (b) of the preceding Article.