



# Japan Issues First Discontinuance Recommendation under the 2017 Amended FEFTA



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## I. Introduction

On April 22, 2026, the Japanese Minister of Finance and the Minister of Economy, Trade and Industry jointly issued a recommendation that MM Holdings LLC (“**MM Holdings**”) discontinue its proposed acquisition of Makino Milling Machine Co., Ltd. (“**Makino**”) (the “**Discontinuance Recommendation**”).

MM Holdings is an acquisition vehicle affiliated with investment funds serviced by MBK Partners K.K. and its related entities (collectively, “**MBK Partners**”). The Discontinuance Recommendation was issued pursuant to Japan’s Foreign Exchange and Foreign Trade Act (the “**FEFTA**”) and covers MM Holdings’ proposed tender offer for Makino, which was to be followed by squeeze out transactions aimed at acquiring 100% of Makino’s shares.

This case represents the first publicly disclosed Discontinuance Recommendation issued under the FEFTA framework as amended in 2017, and the first such recommendation made by the Japanese government in approximately eighteen years. This decision highlights the increasingly substantive national security focused nature of Japan’s foreign direct investment (“**FDI**”) review process, particularly in transactions involving advanced manufacturing capabilities, dual use technologies and

supply chains with potential relevance to defense and national security.

## II. Background of the Transaction

On June 3, 2025, MM Holdings announced its intention to launch a tender offer for all of the outstanding shares of Makino, a company listed on the Tokyo Stock Exchange and globally recognized for its high precision machine tools. Following the completion of the tender offer, MM Holdings planned to implement a series of squeeze out transactions to take Makino private.<sup>1</sup>

The acquisition was proposed by MBK Partners in response to an attempted hostile takeover of Makino by Nidec Corporation in April 2025. In that context, MBK Partners positioned itself as a so called “white knight” investor, proposing a friendly acquisition strategy in support of Makino’s management.

Makino operates in a sector that is closely connected to Japan’s export control and economic security regimes. Certain machine tools manufactured by Makino are subject to the Ministry of Economy, Trade and Industry (“**METI**”) export licensing requirements due to their potential military or dual use applications. In addition, Makino’s products are reportedly being supplied to Japanese defense equipment manufacturers, further

1. MM Holdings LLC, *Notice Regarding MM Holdings LLC’s Plan to Commence Tender Offer for Shares of Makino Milling Machine Co., Ltd.*, available at: [https://ir.makino.co.jp/en/news/pdf/2025/20250603\\_2.pdf](https://ir.makino.co.jp/en/news/pdf/2025/20250603_2.pdf).



heightening regulatory sensitivity from a national security perspective.

From a cross-border regulatory standpoint, the proposed acquisition had reportedly obtained foreign investment approvals in several other jurisdictions, including the United States and certain European countries. Japan remained the final unresolved jurisdiction, with consultations between the investor and the relevant Japanese authorities continuing for a prolonged period prior to the issuance of the Discontinuance Recommendation.

### III. Overview of Japan's FDI Screening Regime under FEFTA

Japan regulates inward direct investments by foreign investors primarily through FEFTA. FEFTA authorizes the Japanese government to review and, where necessary, intervene in foreign investments that may pose a risk to **national security, public order, public safety or the smooth operation of the Japanese economy**.

Under this regime, foreign investors engaging in certain covered transactions—most notably, the acquisition of shares in a Japanese company operating in the designated business sectors—are required to submit a **prior notification** and observe a statutory standstill period before closing. During this period, the Ministry of Finance (“**MOF**”) and the competent industrial ministry (typically METI for manufacturing and technology-related sectors), will conduct a substantive assessment of the transaction from national security and economic security perspectives.

Although overwhelming majority of notified transactions are ultimately cleared, often within a matter of weeks,<sup>2</sup> FEFTA actually grants to Japanese authorities broad discretionary powers. These powers include requiring amendments to the transaction structure, issuing a recommendation that the investment be discontinued, or, in exceptional cases, formally ordering that the transaction be suspended or unwound.<sup>3</sup>

### IV. FEFTA Review Process in Practice

Following the filing of a prior notification, FEFTA imposes an initial statutory standstill period of 30 days, during which time the proposed transaction may not be consummated.<sup>4</sup> In cases involving heightened complexity or national security sensitivity, this review period may be extended for up to five months.<sup>5</sup> During this period, the authorities review the transaction by considering the MOF’s “factors to be considered in authorities’ screening of foreign direct investment.”<sup>6</sup>

As part of the review process, the authorities typically request detailed information regarding, among other matters:

- the investor’s ownership structure and governance arrangements;
- the purpose, strategic intent and commercial rationale of the investment; and
- post-closing plans, including management involvement, board representation and access to sensitive information or technologies.

In practice, where potential national security or economic security concerns are identified, the authorities generally seek to address such concerns through **mitigation**

2. MOF, *Foreign Investment Screening System Annual Report (FY2024)*, p. 26, available at: [https://www.mof.go.jp/english/policy/international\\_policy/fdi/Data/annual\\_report2024\\_en.pdf](https://www.mof.go.jp/english/policy/international_policy/fdi/Data/annual_report2024_en.pdf).

3. FEFTA, art. 27, paras. 5 to 10.

4. *Id.*, art. 27, para. 1.

5. *Id.*, art. 27, paras. 3 and 6.

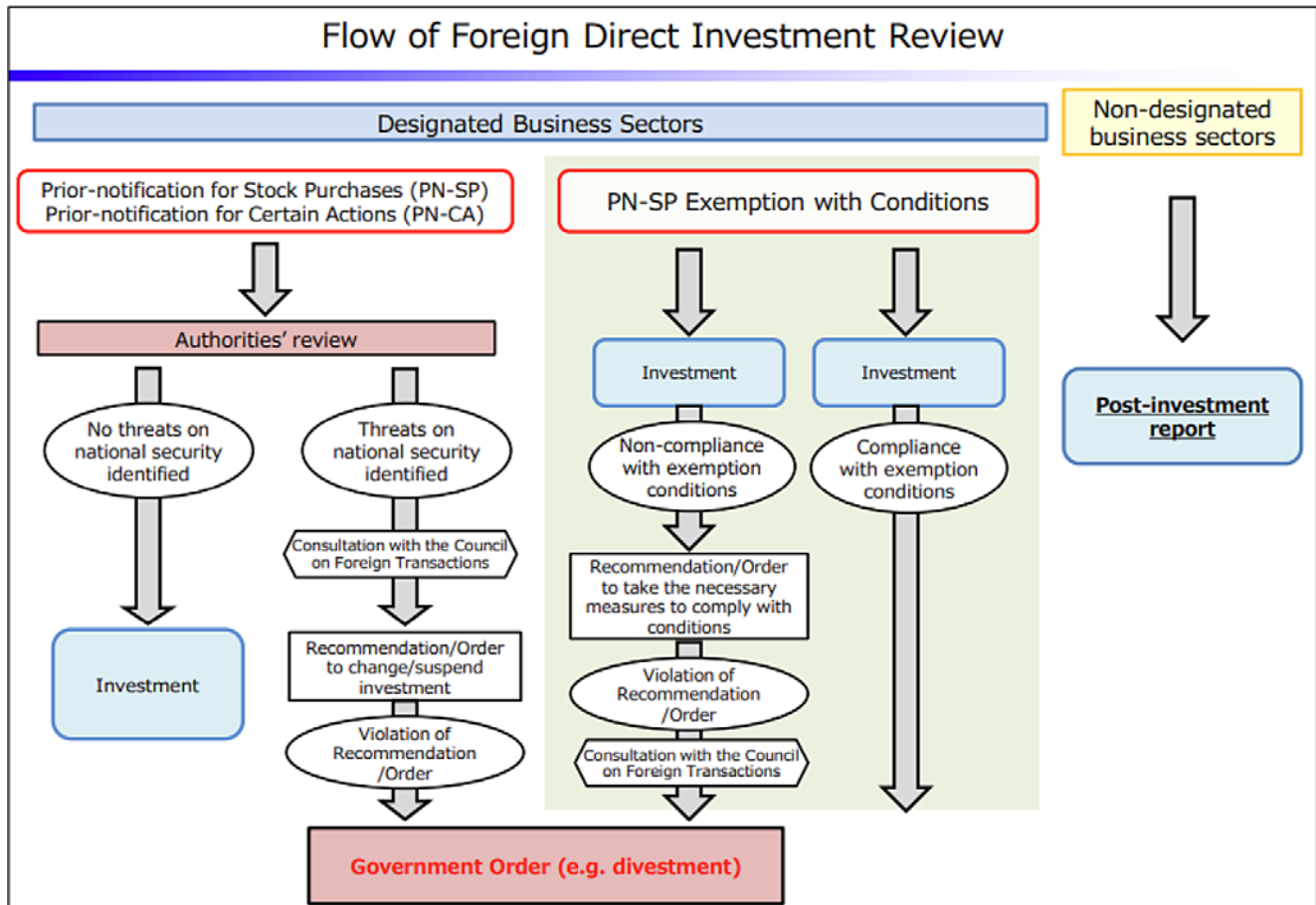
6. MOF, *Factors to be considered in authorities’ screening of foreign direct investment*, available at: [https://www.mof.go.jp/english/policy/international\\_policy/fdi/gaitamehou\\_20200508.htm](https://www.mof.go.jp/english/policy/international_policy/fdi/gaitamehou_20200508.htm).



**commitments** proposed by the investor. These commitments may include restrictions on access to sensitive information, limitations on board participation, or covenants relating to business operations or divestitures.

Only where the authorities determine that such mitigation measures would be ineffective or incompatible with the proposed transaction would the review process escalate toward the issuance of a discontinuance recommendation.

### “Flow of Foreign Direct Investment Review”<sup>7</sup>



## V. Discontinuance Recommendation

According to public disclosures by MM Holdings, the Japanese authorities concluded that the proposed acquisition constituted an inward direct investment that could **impair Japan’s national security interests** within the meaning of FEFTA.

Although the authorities have not publicly disclosed the contents or specific grounds of the Discontinuance Recommendation, MM Holdings has summarized certain aspects of the authorities’ concerns in its press release as follows:<sup>8</sup>

*“According to the Recommendation, the Minister of Finance and the Minister of Economy, Trade and Industry have determined that the Share Acquisition*

7. *Id.*, p. 3.

8. MM Holdings, *Notice of Update on Progress Toward Implementation of Tender Offer for Shares of Makino Milling Machine Co., Ltd.* (Securities Code: 6135), available at <https://ir.makino.co.jp/en/news/pdf/2026/20260423.pdf>.



*constitutes “inward direct investment or an equivalent action that is a matter of national security or a similar concern” as defined in Article 27, Paragraph 3 of the FEFTA, based on the grounds that include: the Target Company manufactures high-performance machine tools that are classified as sensitive goods with a particularly high possibility of being diverted for military use and thus require the permission of the Minister of Economy, Trade and Industry for export; it also possesses technologies and information related to such machine tools, which are widely utilized by manufacture of defense equipment in Japan; the information held by the Target Company includes information that, while not necessarily deemed sensitive on its own, could become sensitive information relating to national security when combined with other information; such information also includes procurement and business information necessary for the formulation and execution of measures to enhance corporate value; and in order to address concerns regarding the Tender Offeror’s access to sensitive information, access to information necessary for enhancing corporate value would also become difficult, which is incompatible with the Tender Offeror’s investment objectives. Apart from the fact that a fund registered in the Cayman Islands to which MBK Partners K.K. and its group companies (the “MBKP Group”) provide service owns all of the Tender Offeror’s shares, the Recommendation makes no mention whatsoever, as reasons for the aforementioned determination, of the attributes and capital structure of the MBKP group, including the Tender Offeror.”*

Based on the foregoing disclosure, it appears that the Japanese authorities placed particular emphasis on the following considerations:

- Makino manufactures high-performance machine tools that have significant potential for military or defense-related uses;
  - Makino possesses sensitive technical and commercial information which, when aggregated, could constitute sensitive information from a national security perspective; and
  - A full acquisition by a foreign investor would give rise to concerns regarding access to, and potential control over, such sensitive information.
- Critically, the authorities concluded that, while restrictions on access to Makino’s sensitive information might be theoretically feasible, such restrictions would also deprive the investor of access to information necessary to formulate and implement its value enhancement strategies. As a result, the authorities viewed any kind of effective mitigation as being fundamentally incompatible with the investor’s stated investment objectives.
- Notably, the Discontinuance Recommendation did not identify concerns relating to the investor’s nationality, specific shareholders or sources of capital, other than noting that investment funds domiciled in the Cayman Islands would ultimately own MM Holdings. Instead, the authorities’ analysis focused on the nature of Makino’s business operations and information assets, as well as the implications of full foreign ownership and control over a company active in a security sensitive sector.
- On the other hand, at least in theory, such security concerns could potentially be addressed through appropriate mitigation commitments, depending on the transaction structure. For example, mitigation may be feasible where:
- foreign investors pursue the acquisition in partnership with domestic investors and structure the investment so that the foreign investors are effectively insulated from sensitive business operations or access to security sensitive information; or
  - sensitive business operations, assets or information of the target company are carved out or segregated in advance of the transaction.



## VI. Legal Effect of a Discontinuance Recommendation

Under FEFTA, a discontinuance recommendation does not, by itself, have immediate binding effect. However, the recipient of such recommendation is required to notify the relevant authorities within a statutory period, specifically, within ten days, whether it intends to comply.<sup>9</sup>

If the investor does not accept the discontinuance recommendation—or fails to respond thereto—the Minister of Finance and the competent minister have the authority to issue a **binding discontinuance order**.<sup>10</sup> Non compliance with such order may result in administrative sanctions and criminal penalties.<sup>11</sup> In the only prior case in which a discontinuance order was issued (in 2008), the Minister of Finance and the Minister of Economy, Trade and Industry issued such a binding order 18 days after the foreign investor declined to accept the discontinuance recommendation. As a practical matter, where a foreign investor chooses not to accept a discontinuance recommendation, there is a high likelihood that a binding discontinuance order will follow.

In the present case, MM Holdings publicly announced that it had decided to accept the Discontinuance Recommendation and, accordingly, determined not to commence the proposed tender offer for Makino.

## VII. Conclusion and Broader Implications for Foreign Investors

This case highlights several important developments in Japan's foreign direct investment review regime under FEFTA.

First, FEFTA review has become increasingly substantive and, in some cases, outcome-determinative, rather

than being largely a procedural hurdle. The authorities' assessment extends well beyond formal ownership thresholds and focuses on the practical implications of a transaction with respect to Japan's national and economic security.

Second, the authorities' analysis emphasizes not only the identity of the investor, but also issues such as **access to sensitive information, the degree of operational control, and, critically, the feasibility and effectiveness of potential mitigation measures**. Where mitigation constraints would undermine the investor's ability to pursue its stated investment strategy, the authorities may consider such measures inadequate or incompatible and issue a discontinuance recommendation.

Third, this case indicates that financial investors, including private equity funds, are not exempt from rigorous scrutiny where the target company operates in sectors considered sensitive from a national security or economic security perspective, such as companies involved in advanced manufacturing or dual-use technologies.

Against this background, foreign investors contemplating acquisitions in Japan should:

- assess FEFTA-related risks at the early stage of transaction planning, particularly in sectors involving advanced manufacturing, dual-use technologies, or defense-adjacent supply chains;
- evaluate whether credible and effective mitigation commitments, if required, would be compatible with the investor's investment purpose and post-closing value creation strategies; and
- approach the Japanese FDI review process as a strategic component of deal structuring and timing, rather than as a mere closing formality.

9. FEFTA, art. 27, para. 7.

10. *Id.*, art. 27, para. 10.

11. *Id.*, art. 70, para. 1, item 25.



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