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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.[1]

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.

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,[2] 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.[3]

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.[4] In cases involving heightened complexity or national security sensitivity, this review period may be extended for up to five months.[5] During this period, the authorities review the transaction by considering the MOF's "factors to be considered in authorities' screening of foreign direct investment."[6]

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.

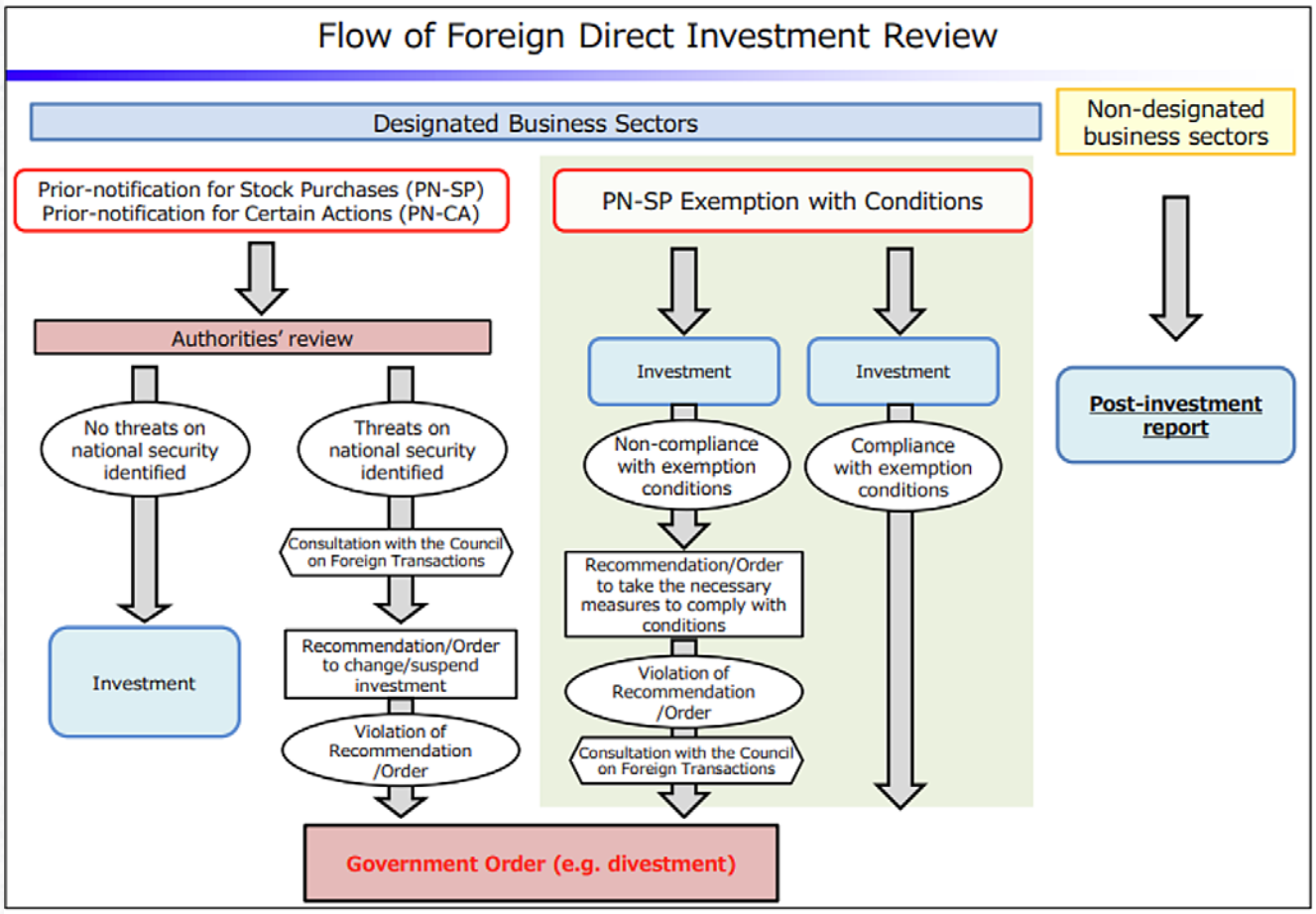
In practice, where potential national security or economic security concerns are identified, the authorities generally seek to address such concerns through **mitigation**

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.
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.

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" [7]



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: [8]

> *"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.[9]

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**.[10] Non compliance with such order may result in administrative sanctions and criminal penalties.[11] 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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The TRIPP TRAPP Chair Decision: The Supreme Court's New Standard for Copyright Protection of Mass-Produced Utilitarian Goods

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I. Introduction

The "TRIPP TRAPP" children's chair ("**TRIPP TRAP**"), which was created in Norway in 1972, is widely known as a long-selling product with cumulative global sales of 14 million units. On April 24, 2026, in a copyright infringement lawsuit litigated in Japan over this chair, the Supreme Court of Japan issued the first ruling establishing the criteria for copyrightability of mass-produced utilitarian goods. This article explains the ruling and its practical implications.

II. Overview of the Case

Norwegian companies Stokke AS and Peter Opsvik AS (collectively, the "**Plaintiffs**") filed a lawsuit claiming that the design of the product (Figure 1 below) manufactured and sold by the defendant, Noz Co., Ltd. (the "**Defendant**"), was similar to the TRIPP TRAPP product design (Figure 2 below) thereby infringing the Plaintiffs' copyrights. Among other claims, the Plaintiffs sought an injunction against the manufacture and sale of the Defendant's product as well as damages.

Figure 1: The Defendant's Product[1]

Figure 2: TRIPP TRAPP[2]

1. *Peter Opsvik AS, et al. v. Noz Corp.*, Intellectual Property High Court, Sept. 25, 2024, 2023 (Ne) No. 10111, appeal from the Tokyo District Court, 2021 (Wa) No. 31529, *"List of Defendant's Products,"* at 35, available at https://www.courts.go.jp/assets/hanrei/hanrei-pdf-93391.pdf (in Japanese).
2. *Id., "List of Plaintiffs' Products,"* at 33.

Both the trial court and the appellate court rejected the Plaintiffs' copyright infringement claim. The Supreme Court later dismissed the Plaintiffs' appeal and upheld those decisions.[3]

III. The Pre-Ruling Landscape: The Long-Standing Issue About the Distinction between Copyright Law and Design Law

The significant attention that this case attracted stems from a long-unresolved issue in Japan's intellectual property legal system.

In Japan, the protection of designs for mass-produced utilitarian goods is primarily governed by the Design Act[4] (the "**Design Act**"). The Design Act applies to any "design," which refers to the shape, pattern, or color, or any combination thereof, of an article (or part thereof), which is aesthetically pleasing in its visual presentation (Design Act, art. 2, para. 1). Design rights arise from the process of application, examination, and registration. The term of protection for design rights is 25 years from the filing date, and the scope of protection of such rights is limited to commercial acts.

By contrast, copyright is protected by the Copyright Act[5] (the "**Copyright Act**"). It arises automatically upon creation with no registration required, lasts, in principle, for 70 years after the author's death, and extends beyond commercial acts. Furthermore, in addition to the economic rights arising from copyright, copyright also gives rise to moral rights (e.g., the right of attribution, the right of integrity, etc.), which cannot be transferred or waived.

The gap between these two legal systems is significant. If the Copyright Act were to be applied broadly to designs of mass-produced utilitarian goods, the need to go through the time and expense of design registration could diminish, potentially undermining the very purpose of the Design Act. There were also concerns about the practical impact on industry, such as the exercise of moral rights obstructing the distribution of products, or competitors being prevented from adopting similar designs long after the expiration of the term of protection of design rights.

These concerns have been raised for some time, but the Copyright Act has no explicit provisions on applied art. While a work of artistic craftsmanship is explicitly included in an "artistic work" (Copyright Act, art. 2, para. 2), there is no provision on mass-produced utilitarian goods. Lower court rulings have also been inconsistent on the question of when mass-produced utilitarian goods could qualify for copyright protection. Thus, the ruling in this case is significant in that the Supreme Court directly confronted this issue for the first time and established a unified standard.

IV. The Criteria Established by the Supreme Court

1. Analytical Framework and General Principles

The Supreme Court set out the following analytical framework.

As a starting point, the Supreme Court held that, in the case of mass-produced utilitarian goods (defined as "goods intended to be mass-produced and put to practical use in everyday life"), even if something constitutes "a creatively produced expression of thought or sentiment," it should not be interpreted as

3. Supreme Court, April 24, 2026, unreported but available at https://www.courts.go.jp/assets/hanrei/hanrei-pdf-95904.pdf (in Japanese).
4. Design Act, Act No. 125 of April 13, 1959, as last amended by Act No. 68 of June 17, 2022.
5. Copyright Act, Act No. 48 of May 6, 1970, as last amended by Act No. 33 of May 26, 2023.

automatically qualifying as a "work" falling within the "artistic domain." [6]

As its rationale, the Supreme Court cited differences between the Design Act and the Copyright Act in terms of their respective subject matter, purpose, requirements, procedures for protection, scope of rights, and duration. The Supreme Court stated that recognizing the broad protection under the Copyright Act in addition to the Design Act for the shapes and other features of mass-produced utilitarian goods could undermine the significance of the Design Act and impede its goal of contributing to the development of industry.

2. Specific Criteria for Copyrightability: "Conceptual Distinction" Test

The Supreme Court then established the following standard for when copyright protection may be recognized for mass-produced utilitarian goods:

> Where the shape or other features of all or part of a mass-produced utilitarian good can be **conceptually understood as distinct from the configuration derived from the functions required for its utilitarian purpose, and as a creative expression of thought or sentiment**, then all or part of such good shall qualify as a "work" falling within the "artistic domain" (Copyright Act, art. 2, para. 1).

The ruling provides two illustrative scenarios in which this standard is typically satisfied.

- **First Type (Addition of a Work of Art):** Where the shape of the added portion is unrelated to its function and can be conceptually understood as a painting or sculpture distinct from the configuration derived from its function. For example, where decoration exceeding the level of mere patterns or surface treatment has been added to the surface of a product.

- **Second Type (Shapes Perceivable as a Sculpture, etc.):** Where the shape of all or part of a product, while related to its function, can nonetheless be conceptually understood as a sculpture, etc., distinct from the configuration derived from its function. For example, where the product, as a whole, can be perceived as a sculpture, etc. The Supreme Court emphasized that such shapes are "exceptional" among mass-produced utilitarian goods.

3. Application to TRIPP TRAPP

Applying the above criteria to the case at hand, the Supreme Court denied copyright protection.

TRIPP TRAPP is a mass-produced utilitarian good. The Plaintiffs argued, in essence, that the TRIPP TRAPP's creativity lies in the fact that it has two legs rising from the floor in an approximately 66-degree L-shape, with a seat board and footrest board fixed parallel to the floor between the two legs. The Supreme Court, however, held that this feature merely provides grounds for concluding that the arrangement of the legs, seat board, and footrest board—all of which are configurations derived from the function of a children's chair—creates an aesthetically pleasing appearance. The Court concluded that the shape of the TRIPP TRAPP as a whole or in part can only be understood as a configuration derived from its function as a children's chair, and not one that is distinct from that configuration as a creative expression of thought or sentiment.

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6. Under the Copyright Act, a "work" eligible for copyright protection is defined as "a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain" (Copyright Act, art. 2, para. 1). In practice, disputes have predominantly focused on whether a given subject matter constitutes "a creatively produced expression of thoughts or sentiments," and it has been rarely at issue whether it falls "within the literary, academic, artistic, or musical domain" because it has been generally assumed that the question of which domain a work falls within was of little significance.

This conclusion is a separate matter from how excellent the TRIPP TRAPP's design may be. The question is not "is it beautiful?" or "is it original?" but rather "does there exist a creative expression that can be conceptually distinct from its function?" Even a world-renowned iconic design cannot receive copyright protection under this standard if its shape is inseparably bound to its function.

V. Supplementary Opinion by Justice Ojima: A Comparative Law Perspective

Justice Ojima wrote a supplementary opinion that examined the significance of this ruling from a comparative law perspective and provided insightful perspectives.

The Plaintiffs had argued, relying on statutes and judicial practice relating to applied art in the United States and various European countries, that TRIPP TRAPP should also be protected as a copyrighted work. The supplementary opinion responded to this by noting that the Berne Convention leaves the design of the relationship between applied art and industrial design to each member country's legislation, and that in drawing lessons from other countries' systems, it is necessary to consider each country's history, social circumstances, the actual structure of its laws, and the intent of its case law.

Justice Ojima outlined the key differences between Japanese law and the legal systems of the U.S. and Europe:

- **In the United States,** there is an explicit statutory provision regarding the design of a useful article in the U.S. Copyright Act (17 U.S.C § 101) and a body of case law has developed around this provision addressing separability and independent existence. Moreover, moral rights are not broadly recognized in the U.S. Copyright Act in any clearly defined form, and enforcement of rights requires registration with the Copyright Office. These are substantial differences compared to Japanese law.

- **In Europe,** against a backdrop of traditionally strong competitiveness in design and brand industries, EU law provides overlapping protection of product designs through both copyright and design rights, and some countries have systems where design rights can arise even without going through a formal examination. This again reflects a legal framework that is quite different from Japan's.

The supplementary opinion states that, under Japan's legal framework, it is necessary to rationally demarcate the respective scopes of the Copyright Act and the Design Act by carefully weighing the purposes of each law and balancing the interests at stake.

VI. Practical Implications

The ruling of the Supreme Court offers the following insights for intellectual property strategies of companies involved in product design.

- **Priority of Design Registration:** The Supreme Court has clarified that, in Japan, the primary means of protecting the design of mass-produced utilitarian goods is the Design Act, not the Copyright Act. Companies should be aware that a design enjoying copyright protection in its home country may not receive legal protection in Japan without a registered design right.

- **Possibility of Copyright Protection:** The standard established in this ruling does not categorically exclude mass-produced utilitarian goods from copyright protection. Copyright may still be recognized where independent artistic elements have been added to a product, or where the product's shape can be conceptually understood as a sculpture, etc., distinct from its function. Judgments regarding highly design-

oriented products will continue to be made on a case-by-case basis.

- **Future Developments:** As Justice Ojima acknowledged in his supplementary opinion, the standard established in the ruling was formulated at a high level of abstraction, and its specific application will require the accumulation of lower court precedents. Developments in new case law should be continuously monitored.

VII. Conclusion

The ruling in the TRIPP TRAPP case is an important landmark in Japan's intellectual property legal system. Its significance lies in the Supreme Court's first establishment of a unified standard for determining whether mass-produced utilitarian goods qualify for copyright protection, a question on which lower courts have previously reached inconsistent conclusions.

The core of that standard is the "conceptual distinction" between the creative expression and the functional configuration of a product. It has been made clear that, under this standard, most shapes and features bound up with function will not receive copyright protection in Japan. When considering the protection of product designs, a rights strategy centered on design registration remains indispensable in Japan.

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Japan's AI Guidelines for Business: Key Updates in Version 1.2 Thereof

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I. Introduction

In recent years, the use of AI in business operations, particularly generative AI, has expanded rapidly. While the scope of applications of AI in corporate activities continues to broaden, responding to legal and compliance-related risks has also become an increasingly important issue. Against this backdrop, the Ministry of Internal Affairs and Communications and the Ministry of Economy, Trade and Industry formulated and published the AI Guidelines for Business in April 2024 with the objective of promoting innovation while ensuring the safety and reliability of AI. The said AI Guidelines are considered a "living document" and are therefore subject to continuous updates.

The latest version, AI Guidelines for Business Ver. 1.2 (the "**AI Guidelines**"), which was published on March 31, 2026, expands upon recent technological developments and practical trends. In addition, supplementary support tools, including the draft Handbook for Utilizing the AI Guidelines for Business and a chatbot, are currently under consideration, thereby further enhancing the practical use of the AI Guidelines. This article outlines the key updates introduced in the AI Guidelines compared with prior versions of the AI Guidelines and presents practical approaches for utilizing the AI Guidelines in corporate practice.

II. Basic Structure of the AI Guidelines for Business Ver. 1.2

Before reviewing the updates introduced in the revised AI Guidelines, it is helpful to first briefly summarize the basic structure of the updated AI Guidelines.

1. Overall Framework of the Updated AI Guidelines

The updated AI Guidelines consist of the main part[1] and several appendices.[2] The main part first sets forth the necessary definitions and terminology (Part 1) and then explains the basic philosophies of AI governance, that is, the type of society the AI Guidelines aim to realize while considering the expectations of stakeholders (the "why") (Part 2). Based on these basic philosophies, the AI Guidelines further organize the guiding principles regarding actions that should be taken in relation to AI (the "what") according to the categories of AI business actors described in Section 2 of this article, namely, the AI Developers, AI Providers, and AI Business Users (Parts 3 to 5).

The appendices to the AI Guidelines present practical implementations (the "how"), including specific practical examples and reference materials for implementing the guiding principles based on the foregoing basic philosophies. The appendices consist of Appendices 1 to 9 and include examples of AI systems

1. Available at https://www.soumu.go.jp/main_content/001064305.pdf.
2. Available at https://www.soumu.go.jp/main_content/001064306.pdf.

and services and specific use examples, examples of AI governance structures, practical examples categorized by AI business actor, contractual considerations, checklists, comparisons with overseas guidelines, and other reference materials.

2. Categorization of AI Business Actors

The AI Guidelines classify the entities subject to the AI Guidelines into three principal categories based on the AI value chain: "AI Developers," "AI Providers," and "AI Business Users," the main actors responsible for AI-related business activities. As discussed in Section 1 of this article, the actions expected to be taken by AI business actors are organized according to each category thereof. Accordingly, companies should first determine which category applies to their own activities before reviewing the contents of the AI Guidelines.

In addition, depending on how AI is utilized, a single AI business actor may simultaneously fall within multiple categories. Companies should therefore avoid viewing their role in a fixed or overly simplistic manner and should instead assess their position from multiple perspectives based on the actual way AI is being utilized by them.

III. Major Updates in AI Guidelines Ver. 1.2 and Specific Practical Applications in Corporate Business

1. Addition of Provisions Relating to AI Agents and Physical AI

One of the most significant updates introduced in Ver. 1.2 of the AI Guidlines is the addition of provisions on AI agents and physical AI. In light of the technological advancement and increasing social adoption of AI agents and physical AI, together with the growing number of cases in which AI-related risks have materialized and the emergence of new risks requiring consideration (including social transformation), the AI Guidelines newly define relevant terms, related benefits, risks, matters requiring attention, and examples of AI systems and services regarding AI agents and physical AI.

The AI Guidelines define an "AI agent" as "an AI system that perceives its environment and acts autonomously to achieve a specific goal" (AI Guidelines, Part 1). Examples of services utilizing AI agents include travel destination suggestions and AI booking agents, as well as AI sales and customer support assistance agents (AI Guidelines, Appendix 1). The AI Guidelines identify as one of the benefits of AI agents their ability to improve operational efficiency in areas such as coordination, analysis, and decision-making through autonomous actions while interacting with multiple systems (*Id.*).

The AI Guidelines define "physical AI" as "a system that takes in environmental information through sensors, processes that information using an AI model, autonomously infers and determines strategies for achieving objectives given by humans, and acts on those strategies without human intervention" (AI Guidelines, Part 1). Physical AI offers benefits such as addressing labor shortages through autonomous actions in physical environments, improving safety, and supporting nursing care and daily living. Examples include autonomous driving systems and autonomous mobile robots (AI Guidelines, Appendix 1).

The AI Guidelines further note that AI agents and physical AI involve risks such as unintended actions resulting from autonomous behavior, the increase in attack surfaces and methods, increased difficulty in control due to highly complex mechanisms, and the generation of malicious code (*Id.*). Considering these risks, attention must be paid to matters such as implementing mechanisms that incorporate human judgment, applying least-privilege settings, and

considering residual data stored in hardware (AI Guidelines, Appendix 3).

From a corporate perspective, the benefits and examples of services relating to AI agents and physical AI cited in the AI Guidelines may serve as useful references when considering the development, provision, or use of new products and services. Companies developing, providing, or using AI agents or physical AI must also pay careful attention to the risks identified in the AI Guidelines and implement measures that appropriately take relevant considerations into account.

2. Updates to AI-Related Risks

The updated AI Guidelines reorganized and expanded the comments relating to AI-related risks to enable AI business actors to better identify and appropriately respond to risks arising from the use of AI. More specifically, the updates include: (i) the addition of content intended to facilitate a risk-based approach; (ii) updates to AI-related risks; and (iii) revisions to the classification of discriminatory outputs.

The AI Guidelines adopt the concept of a "risk-based approach," under which the priority of countermeasures is determined based on factors such as the purpose of the AI use, the relevant stakeholders, and the magnitude and likelihood of potential risks. Under this approach, AI business actors should conduct risk assessments for each category of AI use, classify risks according to levels such as high, medium, and low, and design corresponding response measures in stages. These updates provide useful guidance for AI business actors seeking to translate the risk-based approach into practical implementation and design appropriate response measures.

(a) Addition of Content Intended to Facilitate a Risk-Based Approach

To further enhance AI business actors' understanding of the risk-based approach, the updated AI Guidelines additionally reference, as helpful materials for risk assessment and risk classification methodologies, *"AI Jidai no Keiei Ishikettei to Gabanansu: Seme no AI Gabanansu Jitsugen no tame no Senryaku Repōto Ver 1.0 (the Management Decision-Making and Governance in the AI Era: Strategic Report for Realizing Offensive AI Governance Ver 1.0)"* published by the AI Governance Association ("**AIGA**"),[3] as well as the supplementary material to the EU AI Act entitled *"Artificial Intelligence Act Annex III: High-Risk AI Systems Referred to in Article 6(2)"*[4] (AI Guidelines, Appendix 2).

(b) Updates to AI-related Risks

The discussion of AI-related risks has been updated considering recent developments. These updates include additional discussions of examples of attacks against AI systems; risks of infringement of privacy rights arising from the use of multimodal generative AI, cameras, and voice recognition technologies; the possibility that hallucinations may also generate certain benefits; risks associated with the use of AI in the education sector; risks of becoming victims of financial loss; and risks relating to the infringement of licenses, qualifications, and other rights (AI Guidelines, Appendix 1).

(c) Updates to the Classification of Discriminatory Outputs

"Discriminatory outputs," which constitute one category of AI-related risks, was previously classified as an output-stage risk within the category of technical risks (i.e., risks primarily associated

3. Available at https://cdn.prod.website-files.com/66e98b87b115812d1af8fc1c/69285da091ec71dde1ae3c71_management-strategy-report-ver1.0.pdf (in Japanese).
4. Available at https://artificialintelligenceact.eu/annex/3.

with AI systems). However, based on the view that whether a particular issue constitutes a risk should not be determined solely by technical characteristics, but rather by legal and ethical evaluation as well, discriminatory outputs have been reclassified as an ethical and legal risk within the category of societal risks (i.e., existing risks that may also arise in AI or be amplified by AI). Please refer to Table 1 below for details regarding the systematic classification of AI-related risk examples, including the foregoing updates.

Table 1: Systematic Classification of AI-related Risk Examples (tentative version)[5]

Major categories	Subcategories	Risk examples
Technical Risks (=risks primarily associated with AI systems)	Risks during the learning and input stages of AI	Attacks on AI systems such as data poisoning attacks
	Risks during the output stage of AI	Biased outputs and inconsistent outputs
		Incorrect outputs due to Hallucinations and similar issues
	Risks during the post-response stage	Black-boxing and inadequate explanations of decisions
Societal Risks (=existing risks that may also arise in AI or be amplified by AI)	Risks related to ethics and law	Inappropriate use of personal information
		Occurrence of accidents related to lives, etc.
		Discriminatory outputs
		Excessive dependence
		Misuse
	Risks related to economic activities	Infringement of intellectual property rights, etc.
		Financial loss
		Leak of confidential information
		Unemployment of workers
		Concentration of data and profits
		Infringement of qualifications, etc.
	Risks related to the information space	Distribution and diffusion of disinformation
		Negative influence on democracy
		Filter bubble and echo chamber phenomena
		Loss of diversity and inclusion
		Reproduction of biases
	Risks related to the environment	Energy consumption and environmental load

3. Categorization of AI Business Actors

The updated AI Guidelines revised the categorization of each AI business actor through: (i) supplemental clarification of the definition of AI Developers; (ii) revisions to the "Correlation between AI business actor and general AI use flow"; and (iii) revisions to the role of each AI business actor. As discussed in Section II-2 above, when using the AI Guidelines, companies must determine which category or categories apply to their own activities. These updates are expected to facilitate such determination.

(a) Supplemental Clarification of the Definition of AI Developers

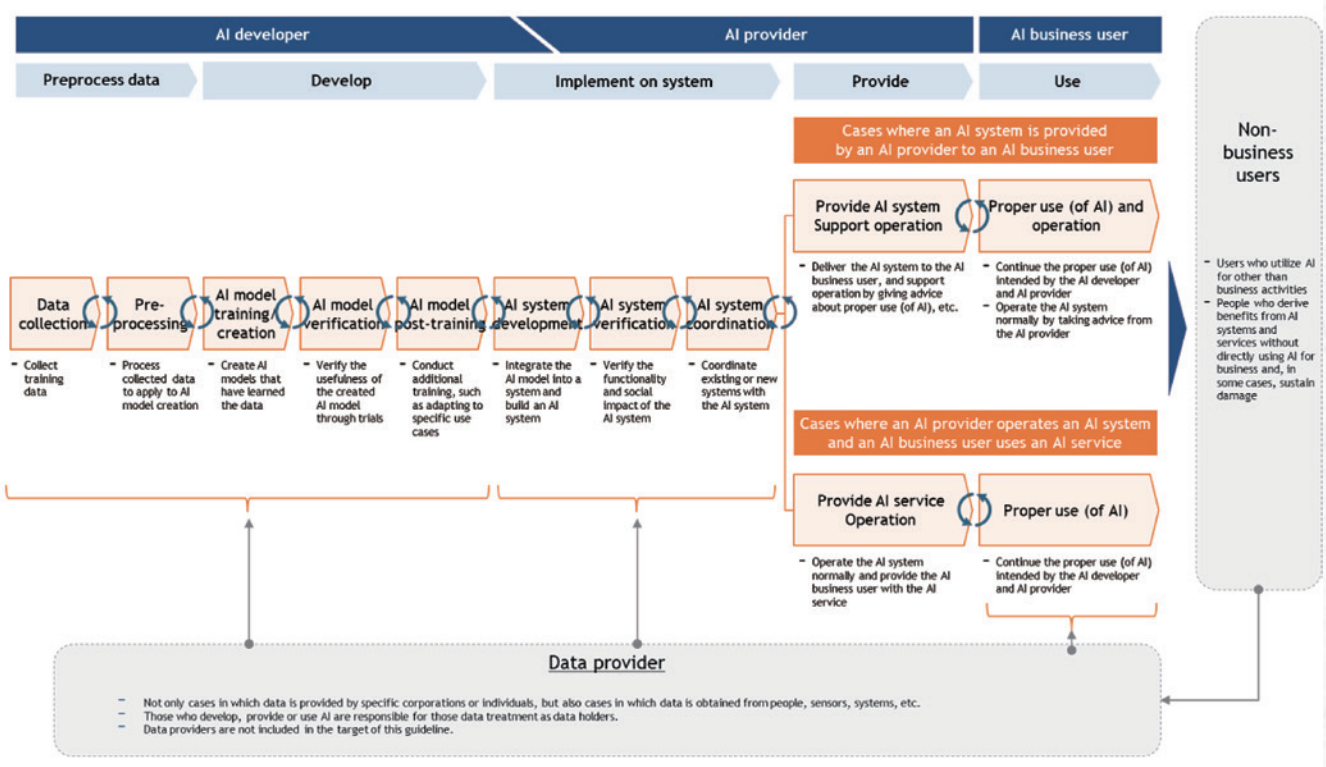
The definition of AI Developers was expanded to clarify that AI Developers do not necessarily undertake all aspects of AI system development and that their role includes post-development model adjustments (post-training), such as fine-tuning, following the development of AI models (AI Guidelines, Part 1).

5. *Appendix to the AI Guidelines for Business*, p. 24, available at https://www.soumu.go.jp/main_content/001064306.pdf.

(b) Revisions to "Correlation between AI Business Actor and General AI Use Flow"

The "Correlation between AI Business Actor and General AI Use Flow" below was revised to expressly include "post-training of AI models" and reorganize the processes relating to "data preprocessing" and "implementation into systems" (AI Guidelines, Appendix 1).

Correlation between AI Business Actor and General AI Use Flow[6]



(c) Revisions to the Roles of AI Business Actors

The role of each AI business actor was also revised as follows:

- where the same AI business actor performs fine-tuning and provides AI systems, it is categorized as both an AI Developer and an AI Provider (AI Guidelines, Appendix 1);
- where an AI system is provided with the assistance of code-generation AI or similar technologies, the relevant actor is categorized as an AI Business User and an AI Provider (*Id.*);
- the AI Guidelines clarified that the definition of API specifications and similar matters fall within the role of AI Developers, while implementation processing relating to APIs falls within the role of AI Providers; and
- the respective roles of AI Developers and AI Providers in relation to alignment (i.e., adjustments intended to realize behavior consistent with human intentions and values) and Retrieval-Augmented Generation ("**RAG**") were reorganized and revised (AI Guidelines, Part 1, and Appendices 3 and 4).

6. *Id.*, p. 9, available at https://www.soumu.go.jp/main_content/001064306.pdf.

4. Revision of Definitions and Terminology for "Training," "Inference," and "Data"

In the updated AI Guidelines, the terminology relating to "training" and "inference," which may be interpreted in multiple ways, as well as the classification of "data," has been reorganized and revised to improve clarity and facilitate understanding.

First, because the term "training" may be interpreted in different ways, the AI Guidelines added a clear definition (AI Guidelines, Part 1). By expressly clarifying that training refers to "the process of determining or improving the parameters of an AI model," the AI Guidelines make clear that "In-Context Learning" does not constitute training because it does not involve the determination of model parameters.

The updated AI Guidelines also added a clear definition of the term "inference," considering the expanding scope of data handled or processed during AI utilization through technologies such as RAG (*Id.*). Under the said guidelines, "[i]nference is the process of providing new data to a trained model and computing outputs (such as predictions, classifications, and generation)."

Furthermore, the updated AI Guidelines added the table below on data used in AI training and utilization, thereby clarifying the relevant definitions. In addition, the terminology relating to data used throughout the AI Guidelines has been revised to align with terminology more commonly used in practice (AI Guidelines, Appendix 1).

Table 2: Classification of AI-related Risks[7]

	Process	Overview	Data Type	Overview	Specific Examples
Flow of AI Training and Utilization	Training (Machine Learning)	A process of determining or improving model parameters using large volumes of data	Training data	Data used to optimize model parameters. The learning algorithm minimizes errors based on this data and learns the relationship between inputs and outputs.	• Internal data • Large-scale open data (e.g., CIFAR-10, MNIST) • Data from stakeholders • Data collected from sensors and systems (refer to Figure 6 "Concepts of data Provision" of the Appendix)
			Validation data	Data used separately from training data during the model training process. It is not used to update model parameters, but is primarily used for purposes such as hyperparameter tuning, detection of overfitting, and model evaluation and judgment.	
			Test data	Data used to evaluate the final performance of a model after the training has been completed. As it has not been used for training or validation, it serves as an appropriate basis for indicators of generalization performance.	
	Inference	A process of providing new input data to a trained machine learning model and computing outputs (such as predictions, classifications, and generation)	Data for inference	Data for inference refers to data used when a trained model generates outputs in response to new inputs. This includes not only user instructions that the model directly processes and data from production environments, but also additional information (such as internal databases and external knowledge) referenced for contextual supplementation and accuracy improvement. By combining these elements, the accuracy and consistency of the model's responses are expected to be enhanced.	• User inputs (prompts, images, audio) • Data acquired in operational environments (sensor-acquired data) • Internal information (FAQs, knowledge bases) • External information (web search results, external APIs) • Contextual information (past conversation history, session information) • Outputs from other models (text and analysis results generated by other AI models)

5. Practical Support Tools for Using the AI Guidelines

To support the use of the AI Guidelines, the following have been made available: (i) the draft Handbook for Utilizing the AI Guidelines for Business, and (ii) a chatbot.

(a) Draft Handbook for Utilizing the AI Guidelines for Business

The draft Handbook for Utilizing the AI Guidelines for Business was prepared to support the practical use of the AI Guidelines. It introduces, among other

7. *Id.*, p. 7, available at https://www.soumu.go.jp/main_content/001064306.pdf.

things, the foundational concepts underlying the use of the AI Guidelines, matters that are advisable to address at the initial stage as preparation and groundwork for establishing AI governance, methods for referring to the AI Guidelines when implementing AI governance in practice, and examples of practical use. In particular, the handbook is intended for organizations and individuals that are beginning to establish and implement AI governance frameworks and is expected to serve as a useful practical tool. However, an English version of the handbook has not yet been released.

(b) Chatbot

A rule-based AI chatbot has been made to enable users to review information relating to the AI Guidelines by two methods: (i) selecting the relevant AI business actor and the matters to be confirmed; and (ii) free-text input. Where questions arise regarding the content of the AI Guidelines, the chatbot provides an accessible first option for consultation and is expected to facilitate understanding of the AI Guidelines. The chatbot is available in several languages, including English.

6. Inclusion of Domestic and International Trends and Corporate Initiatives

The updated AI Guidelines incorporated recent developments relating to AI governance, including the latest domestic and international trends and examples of corporate initiatives that warrant attention. Although this article does not discuss these matters in detail, the updates provide valuable insight into both institutional developments and practical implementation efforts.

IV. Conclusion

The contents of the AI Guidelines were reorganized and expanded considering recent technological developments and the advancement of AI use in practice. As such, the AI Guidelines may be regarded as a useful framework for companies considering how AI should be used and governed in corporate practice.

We hope that this article will contribute to a better understanding of the updated AI Guidelines and assist readers in using them in practice.

In addition, because the AI Guidelines are positioned as a "living document" and are expected to undergo continuous review and revision, companies should not merely refer to the AI Guidelines on a one-time basis. Rather, it is important for companies to continue considering how future updates should be reflected in practice while monitoring developments relating to the AI Guidelines.

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