

## Legal Updates & News

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#### Changes to Japan's Pre-Merger Notification System Become Effective

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On January 1, 2010, amendments to the Japanese Anti-Monopoly Act (the "AMA") that substantially revise Japan's pre-merger notification system came into effect.<sup>[1]</sup> Although the amendments do not alter the legal standards under which the Japan Fair Trade Commission ("JFTC") evaluates proposed transactions, they have changed the AMA to:

- Require a pre-closing notification for certain acquisitions of voting securities
- Revise the pre-merger notification thresholds
- Modify the requirements for the acquisition of voting securities by partnerships

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#### 1. Pre-Closing Filings for Acquisitions of Voting Securities

Under the old AMA notification regime, corporate transactions involving the acquisition of voting securities required only a post-closing filing. The new amendments change this structure and, for the first time, require a pre-closing filing when an acquisition would cause the purchaser to cross ownership thresholds of either 20% or 50% of the voting securities of the target.

Pursuant to the recently promulgated AMA supplemental rules, pre-closing filings are required for covered transactions that are scheduled to close on or after January 31, 2010.

The new AMA also imposes a 30-day waiting period, bringing Japan's review structure more into conformity with those of the United States, Europe, and other jurisdictions.

#### 2. Revisions to Notification Thresholds

The new AMA includes significant changes to the revenue thresholds that trigger a filing obligation.

- The former revenue thresholds of ¥10 billion for the acquiring company and ¥1 billion for the target company (or assets) have increased to ¥20 billion and ¥5 billion, respectively.<sup>[2]</sup> The amendments apply different thresholds to specific types of transactions, including transactions that involve a corporate spin-off or the acquisition of assets.
- Only “domestic sales” are included in determining whether the revenue threshold is met, regardless of whether the party is a foreign or domestic entity. Under the supplemental rules, domestic sales should be calculated on a shipment basis and are the aggregate of (a) sales to consumers in Japan, (b) in most cases, sales to businesses supplied in Japan, and (c) in certain instances, sales to businesses supplied outside Japan.<sup>[3]</sup>
- The revenue thresholds for both the acquirer and target should be calculated on a “group” basis, including the party to the notified transaction, its parent company (if any),<sup>[4]</sup> and all subsidiaries. Under the AMA, determination of whether an entity is a “parent company” or a “subsidiary” is based on the concept of control, and includes both voting control and operational control.

### 3. Acquisition of Voting Securities by Partnerships

Under the old AMA, acquisitions of voting securities by an individual or a partnership would not trigger a filing except in certain limited cases. Under the new AMA, the acquisition of voting securities by a partnership that is controlled by a parent company (as defined above) will be deemed to be an acquisition by the parent company and thus require a filing if the applicable thresholds are met. This development is particularly significant for private equity or venture capital firms doing business in Japan.

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#### Footnotes

<sup>[1]</sup>These amendments are part of a larger bill to extend and amend the AMA that was submitted to the Japanese Diet in February 2009, and passed without revision on June 3, 2009. For additional details, please see Law to Amend Japanese Anti-Monopoly Law Enacted, <http://www.mofo.com/news/updates/files/15708.html>, and Japanese Diet Considers Bill to Amend Japan’s Anti-Monopoly Act, <http://www.mofo.com/news/updates/files/15431.html>.

<sup>[2]</sup>In the case of an asset acquisition, only the revenue attributable to the assets to be acquired is included in determining whether the threshold is met.

<sup>[3]</sup>Sales to businesses inside of Japan can be excluded from domestic sales if the supplier is aware that such products will be resold outside Japan without alteration. Conversely, products supplied outside of Japan should be included in the domestic sales as long as the supplier is aware that such products will be resold into Japan without alteration.

<sup>[4]</sup>In the case of an acquisition of voting securities, the revenue of the target’s parent company need not be included in determining whether the threshold is met.