



# FDI Regulations and Export Control

**Sep. 13, 2008**

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# FDI and FDI Regulations

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- Promotion of FDI is GOJ's policy
  - FDI is essential to realize economic growth, facing population decline
  - GOJ's "Program for Acceleration of FDI"
  - Triangular merger is available under new Company Code
  - FDI Level remains low (3% to GDP)
- Dilemma btwn Promotion and Regulation
- GOJ promotes comprehensive studies in 2008FY on scope and grounds of cases where FDI regulations are necessary as exceptions to the principle of domestic-foreign-nondiscrimination



# FDI Regulations (in countries)

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## ○ FDI regulations are introduced in OECD member countries

### i OECD CODE OF LIBERALISATION OF CAPITAL MOVEMENTS

#### *Article 3* Public order and security

The provisions of this Code shall not prevent a Member from taking action which it considers necessary for:

- i) the maintenance of public order or the protection of public health, morals and safety;
- ii) the protection of its essential security interests;
- iii) the fulfilment of its obligations relating to international peace and security.

\*Article 2; Member may lodge reservations (set out in Annex B to the Code).



# FDI regulations (in Japan)

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## ○ Foreign Exchange/Foreign Trade Law and individual laws have regulations on FDI

- Foreign Exchange/Foreign Trade Law  
Filing requirement for certain investment
- Radio Waves Law Foreign Voting Right be under 1/5<sup>\*</sup>
- Broadcasting Law FVR be under 1/5<sup>\*</sup>
- NTT Law FVR be under 1/3<sup>\*</sup>
- Aviation Law FVR be under 1/3<sup>\*</sup>
- Shipping Freight Industry Law FVR be under 1/3<sup>\*</sup>
- Mining Law Foreign entities not permitted  
( \*FVR and Board are regulated. )



## FDI Regulations (Filing requirement)

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- “Types of businesses” for pre-investment filing are on Annex list of Notification, based on Government Ordinance, and Article 27 of Foreign Exchange/Foreign Trade Law

- “Types of businesses” for pre-investment filing are;

Security Interest ···· manufacturing business of such as arms, aviation, nuclear, space, military-diversibles

Public Order ···· Power, Gas, Telecommunication, Broadcasting, etc

Public Health, Morals and Safety ··· Bio, Patrol

Reserved types ···· Agriculture, etc



# FDI Regulations (countries)

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	Japan	US	UK	France	Germany
Regulation method	Pre-investment filing	Post-investment	Post-investment	Pre-investment filing	Pre-investment filing
Regulated capital	FDI only	FDI only	Foreign, Domestic	FDI only	FDI only
Regulated investment	10% or more stock acquisition	10% or more stock acquisition	M&A	33% or more stock acquisition	25% or more stock acquisition
Regulated business types	Strategic types	Any	Any	Strategic types	Strategic types
Reason of regulation	Public order, safety, security	National security	Public interest	Public order, safety, security	Security interest



## FDI Regulations (countries trend)

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- **EU/US recently strengthening FDI regulations**
- **OECD's principle of  
“Proportional regulation”  
“Predictability” “Accountability”**

# FDI Regulations

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- **Reason of necessity of FDI regulations**

Because of foreign capital

Because of foreign governance

Because of unclear substance of investor

Because of easy-exit

Because of workability of domestic rule

- **Necessity of entry regulation on capital?**
- **Non-discriminatory volume regulation not workable?**
- **Action regulation (obligation, prohibition) not appropriate?**

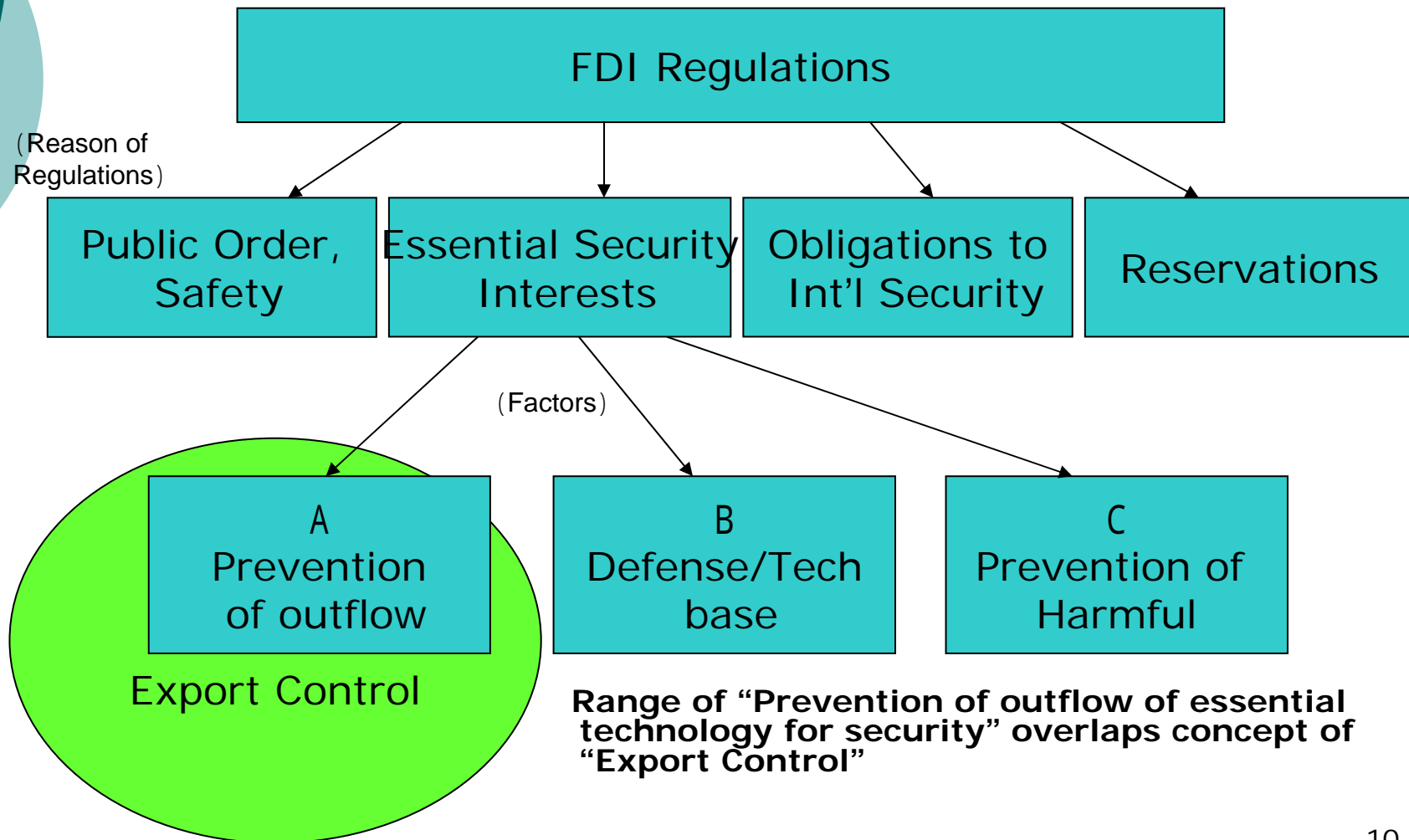


# FDI Regulations and Export Control

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- **Protection of “Essential Security Interests” is internationally-admitted due of course**
  
- **Factors of “Essential Security Interests” are;**
  - A **Prevention of outflow of essential technology for security**
  - B **Maintenance of Defense production/technology base**
  - and,
  - C **Prevention of domestic harmful activity ?**

# System of FDI Regulations





# FDI Regulations and Export Control

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- **Variety of possible regulations on entities from the viewpoint of security**
  - Viewpoints depending on factors;
  - Prevention of outflow of essential technology for security (A); what makes regulation on technology transfer inappropriate
  - Maintenance of Defense production/technology base (B); what makes obligation/prohibition inappropriate
  - Prevention of domestic harmful activity (C); what makes prohibition of certain activity inappropriate
  - FDI regulation/non-discriminatory regulation, pre-investment regulation/post-investment regulation, etc
- **What is essential is clear-range regulation and predictable outcome**



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- **Clear-range regulations**

- **Regulation to “Types of businesses” of invested firm**
- **Possibility/workability of regulation on products/technologies of targeted firm**
- **Clear-cut regulation for foreign M&A players**



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- **Predictability**

- **Clear reason of regulation and “Examination Criteria”**

**To regulation factors such as prevention of outflow of sensitive technology**



# FDI Regulations and Export Control

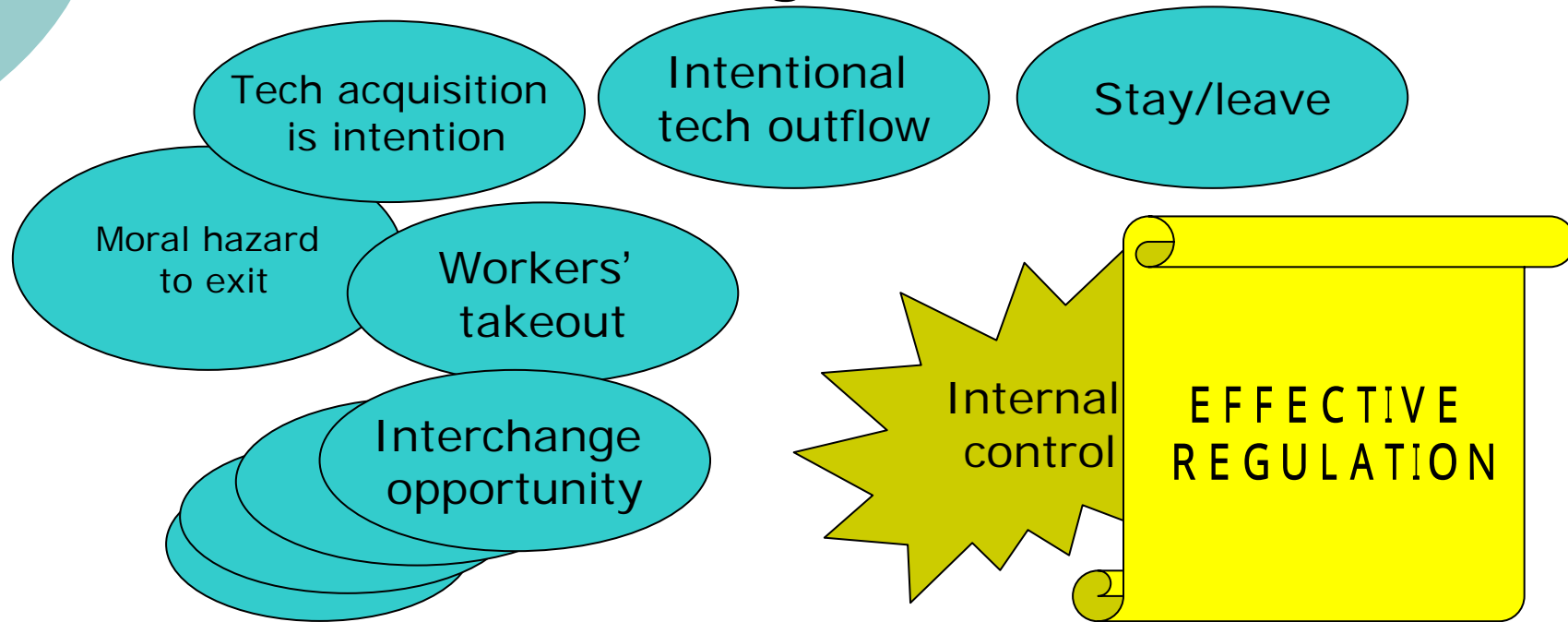
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- **Margin of regulation and necessity of post-investment regulation**
  - **Transfer of stocks in foreign markets, etc**
  - **Post-investment control with prior conditioning**

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- **Prevention of sensitive technology transfer can/cannot be completed with action regulation?**





# FDI Regulations and Export Control

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- **Internal control workable for prevention of technology outflow**
  - No IC duty under Foreign Exchange/Foreign Trade Law
  - Company Code requires large companies to provide with internal control system
  - Introduction/implementation of control program for export control is prerequisite for bulk-license
  - Comprehensibility of regulated technology is indispensable in in-house control



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- **Margin of current regulation on technology transfer (Licensing)**
  - **Regulation on the premise of “Resident/Non-resident”**
  - **Easy/hard to comprehend what are regulated**