

Client Alert

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Japanese government approves a new bill granting authority to investigate and regulate the purchase and use of land and buildings on remote islands and near defense facilities and important infrastructure

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On March 26, the Japanese government approved a new bill: the "Bill on the investigations and regulations of the use of lands and buildings in neighboring areas of certain important facilities and remote islands that are adjacent to borders"¹ ("Bill"). The Bill, which grants authority to investigate and regulate the purchase and use of land and buildings which are in close proximity to defense facilities and important infrastructure², was submitted to the Diet on the same day³. The government and the ruling parties are seeking to pass the bill during the current ordinary session of the Diet ending on June 16, 2021.

The 2014 purchase by a Chinese company of a massive land parcel (7.9 hectares) about 3 km from a Japan Air Self-Defense Force base in Chitose, Hokkaido and 2008 news reports on Korean land purchases on Tsushima island⁴ focused attention on the potential national security implications of real property transactions by non-Japanese nationals. However, no law currently exists that would enable the government to gather information on real property transactions and the actual use of land and buildings for national security reasons. For example, while some information, such as owners' names and addresses, may be published under the Real Property Registration Act (Article 59, etc.), the concept of indefeasibility has not been adopted in Japan and a registration does not necessarily reflect the actual rights and/or encumbrances affecting real property. Japanese laws that impose notification requirements upon the purchase of land, including the Foreign Exchange and Foreign Trade Act⁵, the Cropland Act (Article 3-3), the Forest Act (Article 10-7-2) and the National Land Use Planning Act (Article 23), are of limited use in a national security context and cover only limited types of real property and information⁶.

By contrast, in the United States, the Foreign Investment Risk Review Modernization Act ("FIRRMA") extends the CFIUS' jurisdiction to review certain real estate transactions involving the purchase or lease by, or concession to, a non-US entity, government or individual of real estate in specific airports or

¹ The official English name has not been determined yet. This is a provisional translation of the Japanese name.

² <https://www.kantei.go.jp/jp/kakugi/2021/kakugi-2021032601.html> (Japanese)

³ https://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/keika/1DD221A.htm (Japanese)

⁴ Advisory Panel on assessment of the actual state of land use, Material No. 3, pp. 4-5 (Nov. 9, 2020). https://www.cas.go.jp/jp/seisaku/kokudoriyou_jittai/dai1/siryou3.pdf (Japanese)

⁵ Requires non-residents to file notification of the acquisition of real estate or rights to real estate located in Japan (Article 55-3.(1)(xii)).

⁶ Articles 12 and 14 of the National Land Use Planning Act oblige purchasers of land to obtain authorization from the relevant governor to prevent speculative real property transactions. The Cropland Act also obliges purchasers of agricultural land to obtain permission from the relevant agricultural commission or governor.



maritime ports and near certain military facilities⁷. Australia, the UK and France are also reportedly preparing new legislation in this area⁸. This new legislation regulating certain real property transactions in other countries from a national security standpoint have heightened concern in Japan and led to calls for new legislation to properly address these issues.

All of the requirements and obligations imposed by the Bill apply to both Japanese and non-Japanese nationals. Under Article 5 of the Bill⁹, the Prime Minister may, after hearing the opinion of the Council of Actual Land Use, designate a "vigilance area" anywhere on one of the remote islands adjacent to the Japanese border ("Remote Islands") and on the Japanese mainland within about 1,000 meters of Self-Defense Force facilities, US military bases, Japan Coast Guard facilities and "Life-related facilities"¹⁰ ("Important Facilities"). The Prime Minister is then obliged to investigate the actual use of land and buildings in the vigilance area (Article 6), and may require the heads of relevant ministries and agencies as well as the relevant governor to provide necessary information (Article 7). The Prime Minister may also require related persons, such as land users, to file a report or submit documents if the information provided by these authorities is insufficient (Article 8).

The Prime Minister may then recommend that land users found to be using land or buildings in a way that disturbs or clearly threatens to disturb the functions of Important Facilities or Remote Islands take remedial measures (Article 9(1)). If the land users fail to do so without legitimate reasons, the Prime Minister may then order them to take the remedial measures (Article 9(2)). Failure to comply with such an order is punishable by imprisonment for up to two years and/or a fine of up to 2 million yen (Article 25). If the measures recommended or ordered would significantly inhibit the use of land or buildings, the government is required to purchase them for fair market value from the owners upon their request, subject to certain exceptions (Article 11).

After consulting with the heads of relevant ministries and agencies and hearing the opinion of the Council of Actual Land Use, the Prime Minister may also designate a "special vigilance area" where Important Facilities are of particular significance and particularly susceptible to disturbance and where it would be difficult to find alternative facilities (Article 12). In a special vigilance area, the parties concerned must provide notification of their identities and the purpose of their intended use of land and buildings, etc. before signing a real estate purchase contract (Article 13).

The Bill will come into effect on a date designated by cabinet order within one year and three months of its publication (Supplemental Article 1). It will be reviewed five years after going into effect and the government will be obliged to take necessary measures based on the outcome of the review (Supplemental Article 2). Potential investors in real property in Japan should keep an eye on further developments, including discussions in the Diet and

⁷ <https://www.bakermckenzie.com/en/insight/publications/2020/01/treasury-issues-final-firrra-regulations> (English)

⁸ Advisory Panel on assessment of the actual state of land use, *supra* note 4, pp. 19-20.

⁹ <https://www.cas.go.jp/jp/houan/210326/siryoushu3.pdf> (Japanese)

¹⁰ Such facilities could include nuclear power plants, landing stations for international submarine cables and "joint use airports," etc. See Advisory Panel on assessment of the actual state of land use, Recommendation for new legislation on assessment of the actual state of land use, p. 11 (Dec. 24, 2020).

https://www.cas.go.jp/jp/seisaku/kokudoriyou_jittai/pdf/021224teigen_en.pdf (English)



future cabinet and ministerial orders, to ensure that they are prepared for these new regulations when they come into effect.