

## **Alert** | Real Estate



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### **Japan Enacts Law Restricting Land Use Near Important Facilities and on Islands Near Borders**

On June 16, 2021, the Japanese Diet enacted the Act Concerning Restriction on Usage and Investigation on Usage of Lands Surrounding Important Facilities and Islands Close to the Japanese Border (the “Act”), to be effective by no later than September 2022. The Act, akin to the Committee on Foreign Investment in the United States (CFIUS), was introduced in response to growing national security concerns relating to foreign investments into or acquisitions of land neighboring Japanese army bases. This GT Alert summarizes the Act.

The Act authorizes the government, i.e., the prime minister’s office (PMO), to investigate and request reports from certain landowners and users close to facilities critical to Japan’s national security and to order the owners/users to limit use of or not use such land. The Act also requires the PMO to compensate landowners and users harmed by the limitation or prohibition order and to buy out the land in question upon the request of the person subject to the order.

#### **Persons Subject to the Act**

The Act does not specifically target foreign investors seeking to purchase lands in Japan. The Act applies not only to foreign investors but also to any other persons (including both legal entities and individuals) residing in Japan. Therefore, there is no definition of foreign investors or foreign buyers in the Act.

## Lands Subject to the Act

The lands subject to restrictions and prohibitions under the Act are as follows:

- A. **Designated Observed Areas (DOAs).** Areas designated by the PMO as places within approx. 1,000 meters of where certain critical facilities for national security, such as the following, are located (collectively, the “Important Facilities”), or islands designated by the PMO as part of the Japanese borderline (the “Border Islands”):
  1. Japanese Self Defense Force (JSDF) facilities;
  2. U.S. military facilities;
  3. Japanese Coast Guard facilities;
  4. Certain civil facilities, such as nuclear power plants and commercial airports sharing with JSDF, against which endangering acts would cause material damage to life and property of Japanese nationals.
- B. **Special Designated Observed Areas (SDOAs).** Within the DOAs, there are areas designated by the PMO as among the Important Facilities that include significant, vulnerable, and irreparable locations such as JSDF headquarters, U.S. military bases, and islands especially important, vulnerable, and irreparable for configuring and maintaining the Japanese borderline.
- C. The designation as DOAs and SDOAs will be disclosed to the public in the daily issued National Gazette (*Kanpo*). As the Act is not yet effective, the designation has not been made.

## PMO Actions

The Act authorizes the PMO to take the following actions:

1. Investigate land within a DOA;
2. Report information provided by a landowner and/or user of land within a DOA to relevant ministries and authorities;
3. Request reports from landowners and/or users of land (e.g., lessees from the landowners) within a DOA regarding the status of land use;
4. Request that a land user not use the land within a DOA if the PMO finds a clear danger of interference with the function of the Important Facilities or maintenance of the Japanese borderline;
5. If the request above is not duly observed, the PMO may issue an order to obey the request;
6. If, due to the request or order issued by the PMO, the landowner or user in question suffers a loss and/or causes others a loss, compensate the injured person for such loss;
7. Upon a request from the landowner subject to the request or order above issued by the PMO, buy the land at market value, unless there is a special circumstance;

8. Require a prior notification on the transfer of ownership or other titles of land within an SDOA. The prior notification includes such information as the name of the buyer, details of lands under acquisition, the purpose of acquiring the land and its usage, and other items as stipulated in a future cabinet ordinance;
9. Investigate items provided in the prior notification. A breach of reporting obligation in Item 5 above and violation of any order issued by the PMO in item 8 subject the acquiring company and its representative to criminal penalties (up to JPY 2 million fine and/or up to two-year imprisonment).

The PMO can direct other relevant administration agencies and local governments to cooperate with the PMO to achieve the purpose of this Act.

Note that the Act only sets forth the framework of the restrictions; the detailed implementation rules, such as the designation of civil facilities, will be provided in the forthcoming cabinet ordinance.

### Potential Consequences

If, for example, a company owned by a foreign country purchases a piece of land within 1,000 meters of a JSDF airport, the PMO will commence an investigation into the purchasing company as well as the shareholders. If the purpose of purchasing the land is to build a lookout tower overseeing the airport, then the PMO may issue a request not to construct such tower. If the purchaser does not observe the request, the PMO will issue an order not to build such tower. If the purchaser thinks the land is useless, then the purchaser may request the PMO to buy the land for market value. The purchaser company must conduct proper due diligence on the land to see if such land is included in a DOA.

If the JSDF airport is a JSDF air force regional headquarters, which qualifies as an SDOA, then the purchaser must file a notification with the PMO before the purchase. If the PMO determines that purpose of acquiring the land and its usage is unacceptable, then the PMO will issue the request to not to use the land for the purpose. If the purchaser does not observe the request, the PMO will issue an order not to build such tower. If the purchaser thinks the land is useless, then the purchaser may request the PMO to buy the land for market value. The detailed protocol for the PMO to purchase the land will be provided in the forthcoming cabinet order.

### Schedule

The Act takes effect at the end of September 2022. As noted above, the cabinet order will be issued to set forth detailed regulations under the Act. Usually, a draft cabinet order is published sometime within the year a relevant act is enacted, and then the draft order is processed with the Public Comment Process where anyone may comment to the PMO on the cabinet order, and the PMO can modify the order if it deems a comment reasonable.

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