

JAPAN TO REGULATE USE AND PURCHASE OF STRATEGIC REAL ESTATE

New legislation to regulate the use and purchase of real estate in Japan is scheduled to enter into force in autumn 2022. It is expected that real estate around national security related facilities and islands close to Japan's national border will be subject to review by the Japanese government, and the transfer of such real estate may trigger pre-signing filings. Any person who owns or intends to acquire real estate in Japan should check if such real estate is regulated by this new legislation.

BACKGROUND AND NEW LEGISLATION

The Japanese government previously decided that it was important for national security purposes to manage the ownership and use of land around defence facilities and islands close to its national border. Over the past 10 years, foreign entities have made land purchases within close proximity to self-defence force areas. The Japanese government decided to establish a system to collect information on the status of ownership and use of important land, to manage national security risks, and to take action where necessary.

A new piece of legislation providing for the review and regulation of the use of real estate surrounding important facilities and on remote territorial islands (the Strategic Real Estate Act), was enacted in June 2021. It sets out the government's authority to review and regulate transactions involving land and buildings in areas surrounding facilities and islands that are important from a national security standpoint. It is expected that the Japanese government will designate relevant areas in autumn 2022.

There will be two categories of designated areas: "monitored areas" and "special monitored areas".

DESIGNATION OF MONITORED AREAS AND SPECIAL MONITORED AREAS

Monitored areas may comprise (i) areas around (i.e., within about 1000 metres of) strategic facilities, including defence-related facilities (such as facilities of the Japanese self-defence forces and U.S. Forces Japan), coast guard facilities and important infrastructure (nuclear facilities and airports shared by the self-defence forces), and (ii) border islands. Monitored areas have not been designated yet, however, it is reported that more than 600 strategic

Key issues

- From autumn 2022, the use of real estate close to certain strategic facilities and islands close to Japan's border will be regulated, and the Japanese government will have the right to require owners to report the status of use of such real estate.
- Furthermore, a pre-signing filing is required for the transfer of real estate exceeding 200 square meters, which is (i) close to strategic facilities such as defence-related facilities, or (ii) on islands that serve as boundary limits for the national border.
- A new organisation managing information about regulated real estate is scheduled to be established by June 2022, and regulated areas will be designated in autumn 2022.

facilities may be designated and there are more than 600 border islands which could potentially be so designated.

Special monitored areas are areas considered to be especially important from a national security perspective, including areas around command centres and bases of the Japanese self-defence forces and islands that serve as boundary limits of the national border. It is expected that more than 100 areas will be designated as special monitored areas. Urban areas (e.g., central areas of Tokyo) are currently not expected to be designated as special monitored areas due to potentially significant impact on economic activities, although they may be designated as monitored areas.

REGULATIONS REGARDING MONITORED AREAS

The Japanese government may review the actual status of monitored areas by requesting reports and the submission of relevant documents on the use of land and buildings. A failure to provide reports or documents or the provision of false reports will be subject to fines.

In addition, if users of land and buildings in monitored areas prevent or are capable of preventing the function of strategic facilities and border islands (for example, by carrying out continuous surveillance of strategic facilities), the Japanese government may issue a warning and order such users to cease or abstain from such activities.

Furthermore, the government shall make an effort to purchase ownership rights or revenue rights to land and buildings in monitored areas, if it finds that the real estate should be managed by the government in order to prevent the inappropriate use of such real estate. Although it is not clear how this obligation of making effort would be implemented by the government, this does not mean that the government has a power to force the owner to sell land and buildings. The government would need to make an offer to the owner to purchase land and buildings if necessary.

The above regulations will be applied to real estate acquired before the enactment of the Strategic Real Estate Act and their current owners.

REGULATIONS REGARDING SPECIAL MONITORED AREAS

In addition to the regulations relating to monitored areas described above, a mandatory filing will be required before entering into an agreement to transfer land and/or buildings, the size of which exceeds a certain threshold (currently it is expected to be 200 square meters) within special monitored areas. The law does not indicate a deadline for filing (i.e., it is not clear how many days prior to the signing of a transfer agreement the filing should be made).

There is no approval process and the transfer of real estate is not prohibited if a pre-signing filing has been made (i.e., the parties may complete the transaction). However, if such real estate may be used to prevent the function of relevant strategic facilities and border islands, the Japanese government may issue a warning and order prohibiting such use and/or taking other necessary measures to avoid the prevention of such function. If the owner does not comply with the order, such owner may be subject to a criminal penalty (imprisonment up to 2 years and/or fines up to JPY 2 million).

TIMELINE

The Strategic Real Estate Act will enter into force by 23 September 2022.

The government is aiming to establish a new organisation which will manage strategic real estate information within the Cabinet Office by June 2022. Further, it is expected that the government's advisory committee will start discussions in June 2022 regarding the designation of monitored areas and special monitored areas, and the designation will be made in autumn 2022.

IMPACT ON YOUR BUSINESS

Similar regulations regarding strategic real estate have been implemented in other jurisdictions and with this important development, Japan now also has restrictions on foreign ownership on real property.

If you own land or buildings in Japan, it will in due course be advisable to check whether such land or buildings are located in a monitored area or special monitored area. Real estate owners do not have to act proactively; however, it should be noted that there is a possibility that the Japanese government may request reporting on the use of such real estate.

If you are planning to acquire real estate in Japan, you will have to check if a filing is required before entering into an agreement to acquire such real estate. It is important to note that a filing is required pre-signing, not pre-closing. A transaction timeline should therefore take into account the period required for such pre-signing filing. Although there is no approval process for such pre-signing filing, a potential scrutiny by the Japanese government should be taken into account.

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