

2024 CFIUS Developments: Implications for Japanese Investors in the United States

Publications

October 2024

In April, the Committee on Foreign Investment in the United States (CFIUS) issued a Notice of Proposed Rulemaking (NPRM) to “enhance certain CFIUS procedures and sharpen its penalty and enforcement authorities.” If CFIUS finalizes and implements these proposals, the NPRM would increase the maximum civil monetary penalties for CFIUS violations, such as material misstatements, failures to make mandatory filings, and violations of mitigation agreements. It would also give CFIUS the power to compel information via subpoena from parties to a transaction or from unrelated third parties who may possess information that could assist CFIUS with enforcement or help it gauge transaction risk. The rule would also broaden CFIUS’s standards allowing it to seek information any time in which it deems appropriate.

The NRPM would also introduce changes to the CFIUS process. It would impose a three business day deadline for parties to provide a substantive response to CFIUS’s proposals for mitigating its national security concerns related to a transaction, unless CFIUS grants an extension. This is a highly compressed timeline with which parties may have difficulty complying, depending on the length and complexity of the proposal.

Furthermore, in July, CFIUS proposed expanding the scope of its real estate jurisdictions to cover foreign investments in property proximate to nearly 30 new military installations.

Together, these proposed changes signal CFIUS’s growing focus on enforcement, and the continued expansion of its powers to meet an evolving national security landscape.

CFIUS’s recently released 2023 Annual Report highlights the prominent role of Japanese firms in the CFIUS process. From 2021 to 2023, Japanese investments accounted for the second highest number of declarations, and fourth highest number of notices of any country. Historically, Japanese investors have been willing participants in the CFIUS process. These figures suggest they find strategic value in engaging with CFIUS when making investments which could implicate U.S. national security. Nevertheless, given CFIUS’s increased jurisdiction and enforcement scope, Japanese firms should be prepared to respond to CFIUS’s growing number of information requests in the years to come.

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