ALERT MEMORANDUM

Preparing for Upcoming Changes to Japan's FDI Regime: Three Takeaways From CFIUS Practice

November 16, 2026

Earlier this year, the Japanese Diet enacted the Act Partially Amending the Foreign Exchange and Foreign Trade Act (the Act). Upon amendment, the Act established the Japan Foreign Investment Committee (JFIC), with the Ministry of Finance (MOF) and National Security Secretariat as co-chairs and the Ministry of Foreign Affairs, Ministry of Defense, and Ministry of Economy, Trade, and Industry as core members, and other Japanese government agencies serving as members. Under the Act, MOF and the Ministry with jurisdiction over the sector the business operates in are required to seek the opinions of relevant agencies to evaluate the national security risks of certain transactions depending on the sensitivity of the business sector and technologies involved, the risk profile of the foreign investor, and the level of control to be obtained by the foreign investor. The JFIC has been referred to as "Japanese CFIUS" in reference to the parallels between the JFIC's structure and that of the Committee on Foreign Investment in the United States (CFIUS).

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

WASHINGTON

Chase Kaniecki
+1 202 974 1792
ckaniecki@cgsh.com

B.J. Altvater
+1 202 974 1584
baltvater@cgsh.com

Junichi Shingai
+1 202 974 1870
jshingai@cgsh.com

Alexi T. Stocker
+1 202 974 1626
astocker@cgsh.com

© Cleary Gottlieb Steen & Hamilton LLP, 2026. All rights reserved.
This memorandum was prepared as a service to clients and other friends of Cleary Gottlieb to report on recent developments that may be of interest to them. The information in it is therefore general, and should not be considered or relied on as legal advice. Throughout this memorandum, "Cleary Gottlieb" and the "firm" refer to Cleary Gottlieb Steen & Hamilton LLP and its affiliated entities in certain jurisdictions, and the term "offices" includes offices of those affiliated entities.

The Act also introduces substantive changes to the Japanese FDI regime. The four most significant changes are:

1. Expanding the scope of Japanese FDI review to include certain indirect, foreign-to-foreign acquisitions of Japanese businesses.
2. Imposing anti-circumvention mechanisms by revising the categories of Japanese domestic investors that can be deemed "foreign investors."
3. Establishing a legal framework for the imposition and enforcement of mitigation measures to address national security risks identified by the Japanese FDI authorities during its review of a transaction.
4. Authorizing the Japanese FDI authorities to initiate reviews of certain closed transactions that did not trigger a pre-closing FDI review (this is similar to the so-called CFIUS non-notified process).

Changes (i) through (iii) will apply to investments closed on or after February 3, 2027. Change (iv) will apply to investments closed on or after January 4, 2027.

These changes, together with the formation of the JFIC, bring Japan's FDI review process closer in substance and procedure to that of CFIUS. Below, we discuss how lessons from CFIUS practice in the United States can help prepare for upcoming changes to Japanese FDI reviews.

I. Indirect Acquisitions & Control

Currently, the Japanese FDI regime only requires pre-closing FDI filings for the direct acquisition of voting or equity interests in Japanese businesses operating in certain sensitive sectors of the Japanese economy ("designated business sectors"), creating a broad exemption for indirect transactions effectuated through the acquisition of a Japanese company's non-Japanese parent. The Act expands the scope of Japanese FDI reviews to include certain indirect acquisitions of a majority of voting or equity interests (and certain exercise of director or officer appointment rights) by most investors, and acquisitions of as low as 1% of listed companies' voting or equity interests and any acquisitions of unlisted companies' voting or equity interests for high risk foreign persons.[1]

To enhance the Japanese FDI regime's anti-circumvention mechanisms, the Act expands FDI review requirements to cover investments by persons, including Japanese companies, under the "control or strong influence" of foreign investors and are high risk foreign persons for FDI purposes. "Control or strong influence" can include cases where a Japanese investor makes an investment from the account of a high risk foreign investor, or pursuant to a contractual or other special relationship with a high risk foreign investor.

The CFIUS regulations have long captured indirect acquisitions of "control" (broadly defined under the CFIUS regulations and more akin, in practice, to "substantial influence") by foreign investors. As part of the CFIUS diligence process, CFIUS practitioners trace the beneficial ownership and control of entities acquiring interests in a U.S. business to determine the interests foreign investors will be acquiring in a U.S. business. CFIUS practitioners also consider whether a foreign person is directly or indirectly acquiring a right to determine, direct, or decide important matters affecting a U.S. business. Similar to the Japanese FDI regime's concept of "control or strong influence," a CFIUS "control" analysis involves examining whether a foreign person will have unique contractual arrangements with a U.S. business that could result in CFIUS, which has significant discretion to interpret its regulations, to determine that the foreign person controls the U.S. business. Such analyses can be especially complicated when assessing acquisitions by private equity funds, where a foreign person can be deemed to control a fund through an ownership interest in the general partner and/or certain

[1] "High risk foreign person" includes foreign governments, state-owned enterprises, and other entities that are required to cooperate with information-gathering activities by foreign governments that may pose a national security risk, based on obligations under foreign laws or connections to foreign governments.

nonpassive limited partner interests. CFIUS practitioners will evaluate fund governance documents and operating agreements for the acquiring entity to assess the voting and other governance rights in the U.S. business to be acquired by foreign investors. Similar diligence and document review practices will help in identifying filing requirements in Japan.

II. Mitigation

Under the existing Japanese FDI regime, national security concerns that arise during an FDI review typically are addressed through a relatively informal withdraw-and-refile process, whereby the foreign investor withdraws its FDI filing and refiles with revisions specifying the mitigation measures that will be used to mitigate national security risks. Under the Act, investors will be able to submit proposed mitigation measures during the review period without withdrawing the filing. If fewer than 14 days remain in the review period when the proposed mitigation measures are submitted by the investor, it will be extended to 14 days from the date mitigation measures are accepted (to be more precise, the date an amendment notification including mitigation measures is accepted). Additionally, the Act authorizes the Japanese authorities to issue recommendations or orders to revise proposed mitigation measures and establishes a framework for imposing penalties if the foreign investor fails to comply with the mitigation measures, including unwinding the transaction.

The Act grants the Japanese authorities mitigation powers more in line with those held by CFIUS. Accordingly, transaction parties facing a Japanese FDI filing under the revised regime should consider integrating regulatory efforts language into the transaction documents to address the risk of mitigation, a practice commonly used where parties to a transaction will file with CFIUS. As CFIUS practitioners typically advise their clients, transaction parties filing under the new Japanese FDI regime should assess the realm of possible mitigation measures and consider the cost of such mitigation measures, establishing any red lines before signing and making sure that each respective party's interests are protected in the event the Japanese authorities push for more rigorous mitigation measures than initially expected.

III. Non-Notified Review

The Act grants the Japanese authorities the power to conduct post-closing reviews of certain foreign investments not subject to preclosing FDI review. Although the scope of that review is limited to high risk foreign persons' investments, the Japanese FDI authorities subsequently may impose mitigation measures or unwind the transaction. The lookback period will be five years.

While certain transactions subject to CFIUS jurisdiction trigger a mandatory filing, for most transactions, the decision by the parties to file with CFIUS is voluntary. CFIUS's power to review non-notified transactions has long informed risk assessments when assessing whether to make a voluntary filing where a transaction is within CFIUS jurisdiction but a filing is not required under the CFIUS regulations. Post-closing, non-notified reviews carry the risk of less favorable mitigation (or even forced divestitures) with minimal recourse for the foreign investor. With respect to Japanese FDI filings, counsel may benefit from conducting a similar substantive analysis to assess whether the target business has any national security touchpoints that could increase the chances of the transaction being called in post-closing. Similarly, acquirers may consider requesting representations from sellers that the business does not operate in certain sensitive sectors, similar to how CFIUS practitioners often advise foreign investors to request representations that the U.S. business does not perform certain sensitive activities.

IV. The Big Picture

The Act is expected to significantly increase the number of Japanese FDI filings. The currently identified categories of high risk foreign investors indicate that indirect acquisitions by Chinese state-owned enterprises will be subject to a thorough review, and may be mitigated more aggressively under the Japanese authorities' expanded mitigation powers. Other government-owned investments in Japan,

likewise, may be subject to increased scrutiny under the Act.

The Cleary Gottlieb CFIUS team is available to discuss guidance on the above-described diligence and regulatory risk management practices described above, or to address any other questions about our CFIUS or global FDI practice.

…

CLEARY GOTTLIEB