COUNTRY COMPARATIVE GUIDES 2024

The Legal 500 Country Comparative Guides

Japan

INVESTING IN

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Japan.

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JAPAN
INVESTING IN

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

According to the “Balance of Payments” (asset and liability principle) of the Ministry of Finance and Bank of Japan, FDI flows to Japan in 2021 decreased significantly by 55% year-on-year to 27.32 billion US dollars. It was 61.51 billion US dollars in 2020, and 17.19 billion US dollars for the period from January-May 2022.

Looking at this figure in 2021 by type of capital, equity capital increased 425% year-on-year to 23.67 billion US dollars, reinvestment of earnings fell 14.3% to 8.2 billion US dollars, while debt instruments, which represent the lending and borrowing of funds between enterprises with capital ties, turned negative at -4.55 billion US dollars from 46.44 billion US dollars (5.1 trillion Japanese yen) in the previous year. Equity capital, which represents the trend of new investments and capital increases in Japan, increased significantly and reached a record high, a turnaround from 2020, when the economy and public were affected by the global COVID-19 pandemic.

Breaking down FDI flow to Japan (asset liability principle) in 2021, by region, Asia accounted for the highest amount at 20.03 billion US dollars, up 98.5% from the previous year, followed by North America at 9.11 billion US dollars, down 41.4%. Europe saw a net withdrawal of 10.02 billion US dollars. As for Asia, investments from Hong Kong were the largest among the countries and regions in the world at 11.84 billion US dollars, up 533.1% year-on-year, and those from Singapore were the third largest at 5.46 billion US dollars, up 33.7%.

Since the above statistics are data from a period when the country was in the midst of a pandemic, FDI flow is expected to trend upward in the near future, given the abolition of COVID-19 related regulations in May 2023 and the weakening of the Japanese yen that began in 2022.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

The typical form of FDI is M&A, which includes the acquisition of businesses through stock or asset transactions. In 2021, the number of cross-border M&A deals into Japan (inbound M&A deals), based on completion date, increased by 22.6% (168 deals) compared with the previous year. The number of inbound M&A deals declined year-on-year for four consecutive years until 2018, but from 2019, it increased by double digits for three straight years. Looking at the number of deals in 2021 by investor country and region, the US accounted for the largest at 56 deals (33.3% of the total), followed by Singapore (19 deals, 11.3% of the total) and South Korea (18 deals, 10.7% of the total).

As for greenfield investments in Japan, the number in 2021 (based on the date of announcement) was 173, falling 9.9% from the previous year and marking the third consecutive year-on-year decline. Looking at the number by investor country and region, the US marked the largest number of projects at 54 (31.2% of the total), followed by Germany (19 projects, 11% of the total) and the UK (18 projects, 10.4% of the total).

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors are generally not prohibited from holding 100% equity in a Japanese corporation. However, from the perspective of security policy, industrial policy, and economic policy, laws and regulations may restrict the acquisition and holding of voting rights by foreign

investors, to a certain extent, in companies engaged in certain types of business (Please see Question 19 for more details).

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Yes, foreign investors are allowed to invest and hold the same class of stock as domestic shareholders in both public and private companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Japanese businesses are typically run by domestic entities.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

• What are the forms of domestic companies?

There are four forms of domestic companies under the Companies Act: joint stock company (*kabushiki kaisha*), limited liability company (*godo kaisha*), general partnership company (*gomei kaisha*), and limited partnership company (*goshi kaisha*).

A joint stock company is the most commonly used form for domestic companies. Shares of a joint stock company are in the form of equally divided proportional units, and generally, each member of such company (a shareholder) is not directly liable to the creditors of the company and is not liable to the company beyond the subscription amount of the shares subscribed to by it, unless the corporate veil is pierced.

A limited liability company is constituted by limited liability members only. The limited liability company was newly introduced in 2006 through the enactment of the Companies Act and is modeled on the limited liability company in the US.

A general partnership company consists only of unlimited liability members. Any member of a general partnership company is directly liable for the full amount of the debts and obligations of such company to its creditors.

A limited partnership company consists of both unlimited liability members and limited liability members.

• Which form is preferred by domestic shareholders?

Domestic shareholders usually prefer a joint stock company as the share ownership and management of such company may be legally separated. Another substantial reason for choosing a joint stock company is the overwhelmingly high level of social reputation and brand cachet given to joint stock companies by various stakeholders, such as commercial banks, customers, clients, and employees, compared to other forms. Domestic shareholders also often prefer a limited liability company as it provides flexibility in its internal governance structure, such that the articles of incorporation can stipulate the method of preparation and approval of financial statements, and there is no need to publicize financial statements. A general partnership company and a limited partnership company are rarely used and, when used, they tend to be used for family-owned, small businesses.

• Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Foreign investors/shareholders generally prefer a joint stock company or a limited liability company for the same reasons as those stated above. A general partnership company and a limited partnership company are often not suitable for their use due to the nature of the unlimited liability of its members. However, investors from some jurisdictions such as the United States may prefer a limited liability company since its regulations under the Companies Act are more flexible than those of joint stock companies, and US investors may enjoy pass-through tax treatment under the “check-the-box” regulations of the US federal tax regulations on profits and losses in a limited liability company. Prominent Japanese subsidiaries of US companies such as Apple, Amazon, and Google are incorporated in the form of limited liability companies.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a

domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

• What are the requirements for forming a company? Which governmental entities have to give approvals?

Companies are legally formed upon the registration of their incorporation with the Legal Affairs Bureau having jurisdiction over the location of their head office. Under the Companies Act, the incorporation does not require approval by any authority other than the Legal Affairs Bureau.

• What is the process for forming/incorporating a domestic company?

The overall procedure for the incorporation of a joint stock company is as follows:

a. Determining the promoter(s);

b. Preparation and notarization of the articles of incorporation;

c. Subscription of shares;

d. Selection of directors, etc.; and

e. Registration of incorporation.

As to item (b) above, the initial articles of incorporation, which are to be notarized, must contain certain provisions concerning the business objectives, trade name, location of the principal office, value (or minimum value of assets to be contributed at the time of incorporation), and the names and addresses of the promoters.

There are two types of incorporation procedures for a joint stock corporation:

(i) Incorporation by promoter (*hokki setsuritsu)*, for which all shares to be issued upon incorporation are subscribed for only by the promoter(s); and

(ii) Incorporation with offering (*boshu setsuritsu*), for which initial shares are subscribed for not only by the promoter(s) but also by other subscribers.

One of the most significant practical differences between the two incorporation procedures described above is that in the incorporation with offering, the paid-in subscriptions must be kept in the fee-based custody of a designated financial institution until the registration process is completed, while such custody arrangement is not required in the incorporation by promoter. Therefore, incorporation by promoter is chosen in many cases.

• What is a required capitalization for forming/incorporating a company?

No minimum capital amount is required for incorporation under the Companies Act, so the initial capital amount may be 1 Japanese yen or more.

• How long does it take to form a domestic company?

It normally takes about one month to file the registration application for a joint stock company, taking into account the time necessary for collecting the necessary information, drafting the necessary documents (including finalizing the initial articles of incorporation and making an appointment with the office of the notary public for the notarization of the articles), and making arrangements with a bank, as well as making arrangements to obtain a company seal. It may be shorter to form the other forms of domestic companies in Japan because the notarization of the initial articles of incorporation is not required.

• How many shareholders is the company required to have?

To form a joint stock company, at least one shareholder is required.

• Is the list of shareholders publicly available?

The list of shareholders (“Shareholders’ List”) of a joint stock company is not publicly available. However, a joint stock company must keep a Shareholders’ List in writing or in an electronic form at its head office, and shareholders and creditors of the company may, at any time during the business hours of the company, make a request for the inspection or copying of such list.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

The acquisition of shares in a private company by a foreign investor, except for the specified acquisitions described below, is treated as an FDI under the Foreign Exchange and Foreign Trade Act (“FEFTA”). Depending on each case, there may be a requirement to make a prior notification and/or an *ex post facto* submission of

an investment report under the FEFTA whenever a foreign investor acquires shares in a private company (Please see Question 19 for more details).

It should be noted that the acquisition of shares in an unlisted company by a foreign investor from another foreign investor is not deemed an FDI but is classified as a "specified acquisition" under the FEFTA. A specified acquisition may be subject to a prior notification under certain circumstances, like an FDI, but if prior notification is not required, then no *ex post facto* investment report will also be required for the specified acquisition, unlike in the case of an FDI.

Also, the transfer from a resident to a non-resident of securities, such as public bonds, corporate bonds, shares, credits, treasury bills, profit-sharing securities, coupons, and commercial papers, etc. (except for transactions that are treated as FDI), and the acquisition of real estate in Japan or rights related thereto by a non-resident is treated as a "capital transaction" under the FEFTA and may be subject to approval or *ex post facto* investment reporting requirements.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

There are requirements of prior notification and/or *ex post facto* submission of an investment report when a foreign investor acquires shares in a public company on a domestic stock market or in a direct (private) transaction from shareholders (Please see Question 19 for more details).

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

If a person intends to acquire shares that would result in acquiring more than one-third of the voting rights of a listed company, the person intending to acquire those shares must conduct the transaction in accordance with the Japanese tender offer regulations. The acquirer would need to offer a uniform purchase price to all the shareholders, and purchase the tendered shares within a certain period of time pre-determined by the acquirer. During the tender offer period, the acquirer may not purchase shares in the same listed company by any method other than through the tender offer. The acquirer may set a minimum number of shares to be acquired in advance, and if the number of shares tendered during the tender offer period does not reach such minimum, the tender offer will fail. As long as the acquirer does not aim to acquire two-thirds or more of the voting rights, it will have no obligation to purchase all the shares. It is possible to set a maximum number of shares to be acquired in advance so that the acquirer's post-acquisition voting rights in the relevant listed company are less than two-thirds of the total voting rights.

It should be noted that the Japanese government decided in March 2023 to fundamentally revise the tender offer regulations in the country, so the foregoing regulations are expected to change in a few years.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

There are many relevant laws to regulate the building of a new facility in Japan. For instance, the City Planning Act authorizes local prefectures to designate city planning areas and quasi-city planning areas and regulates the usage of districts and zones therein. The Building Standards Act regulates, for instance, building coverage ratio, floor-area ratio, and the building height of a facility. Also, the Factory Location Act is applicable to factories for manufacturing, gas supply, heat supply and electricity supply (except for hydroelectric, geothermal and solar power plants) with site areas of 9,000m^2 or more, or with building areas of 3,000m^2 or more, to regulate the ratio of the production facilities and environmental facilities. Further, the Landscape Act, the Fire Service Act, the Water Supply Act, the Road Act, the Act on Waste Management and Public Cleansing, the Cultural Properties Preservation Act, etc. are also applicable.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an

approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

• Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- in an acquisition, or
- to pay to contractors, or
- to pay salaries of employees?

There is no approval requirement to use foreign currency in an acquisition or to pay contractors in Japan. On the other hand, under the Labor Standards Act, the payment of salaries of employees in Japan should be made in Japanese yen. It is possible to pay the salary of an employee in Japan in foreign currency if such arrangement is agreed upon between the labor union and the employer in a collective agreement.

• Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

- Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

There is no approval requirement or limit on how much foreign currency a foreign investor can transfer into Japan. It should be noted, however, that if the amount of the money transferred from a foreign country into Japan exceeds an amount equivalent to 30 million Japanese yen, such transfer would need to be reported to the Minister of Finance through the Central Bank, i.e., the Bank of Japan, after the transfer.

- Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

There is no approval requirement or limit on how much Japanese yen a foreign investor can buy in Japan.

- Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Yes, a foreign investor can validly do these activities.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

• Whose approval is required?

In practice, there is no approval requirement for a foreign investor to transfer Japanese yen or foreign currency out of Japan. It should be noted, however, that the government has imposed economic sanctions that cover certain payments to designated foreign persons and entities or for certain purposes, etc., and for the export of means of payment, including cash, to North Korea and Russia under certain conditions. These restricted payments would need the approval of the Minister of Finance.

• How long does it take to get the approval?

The approval of certain payments to designated foreign persons and entities or for certain purposes, etc., and for the export of means of payment, including cash, to North Korea and Russia under certain conditions, as discussed above, is unlikely to be granted.

• Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

There are no limitations on the amount of foreign currency or Japanese yen that can be transferred out of Japan. However, if the amount of money (regardless of whether it's Japanese yen or foreign currency) transferred from Japan to a foreign country exceeds an amount equivalent to 30 million Japanese yen, such transfer should be reported to the Minister of Finance through the Bank of Japan after the transfer. Also, if a person intends to carry means of payment out of Japan, including "cash, etc.," exceeding the equivalent of 1 million Japanese yen, that person must declare this to Customs in advance.

• Is the approval required for each transfer or can it be

granted for all future transfers?

Please see above.

14. Is there a tax or duty on foreign currency conversion?

No consumption tax is charged on foreign currency conversions. If foreign exchange gains arise from a foreign currency conversion, depending on the amount, such gains may need to be declared with the Japanese tax authorities as miscellaneous income.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

There is no tax or customs duty on bringing foreign currency or Japanese yen into Japan. However, if a person brings into the country means of payment, including “cash, etc.,” exceeding the equivalent of 1 million Japanese yen, that person must declare this to Customs in advance. “Cash, etc.” includes cash (whether Japanese yen or foreign currency), checks (including traveler’s checks), promissory notes, and securities (share certificates, government bonds, etc.).

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

In an acquisition of shares, the buyer is not taxed in principle, but the seller is taxed on the gain from the stock transfer. In addition, neither party will be subject to stamp duty or consumption tax. Since there is no transfer of assets or other assets in the company issuing the shares being transferred, there is no change in the taxation of that company. In a business transfer, taxation occurs for both the seller and buyer. The seller is taxed on the difference between the book value and the transfer price of the transferred assets as gain or loss from the transfer. Unless the seller itself dissolves or liquidates after the transfer of the business, no taxation at the level of the seller’s shareholders will arise. The buyer does not inherit the seller’s tax risk, but neither does it inherit the seller’s net operating loss carryforwards. In principle, except for the transfer of land, securities, monetary claims, and cash, the transfer of assets in a business transfer is subject to consumption tax, which is paid by the buyer to the seller who will eventually pay it to the tax authorities. A business transfer is also subject to stamp duty. The amount of stamp duty depends on the amount of the transfer price, with the maximum being 600,000 Japanese yen if the transfer price exceeds 5 billion Japanese yen (Please see Question 17 for more details on stamp duty).

17. When is a stamp duty required to be paid?

Stamp duty is imposed whenever a certain taxable document (“Taxable Document”) is created in Japan. The person who created the Taxable Document is generally liable to pay the stamp duty even if such person is a foreign corporation. In principle, the stamp duty is paid by affixing revenue stamps equivalent to the amount of the stamp duty imposed on the Taxable Document to the original Taxable Document. The stamp must be canceled by affixing a seal or signing over the Taxable Document and the stamp. In a business transfer agreement, in practice, at the time of signing, a stamp with an appropriate amount will be affixed on the original agreement and canceled by each party. It is common practice to provide in the business transfer agreement that the burden over the stamp duty will be split equally between the two parties. In the case of electronic contracts, no stamp duty is imposed.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

• Can the shares be held outside of the home jurisdiction?

In principle, foreign entities may hold shares in domestic companies. However, depending on the industry, the ratio of shares that can be held by foreign entities may be regulated. Specifically, investments in NTT and Japan Exchange Group, Inc. are regulated, and foreign investment restrictions are imposed under the Mining Act, Radio Act, Broadcasting Act, Civil Aeronautics Act, and Freight Forwarding Business Act. In addition, if an acquisition of shares by a foreign investor is subject to prior notification under the FEFTA, upon screening, the authorities may recommend that the investment be stopped or amended if there are any national security concerns. If the foreign investor does not follow such recommendation, the authorities may order that the investment be stopped or amended (Please see Question 19 for more details).

• What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

Most unlisted companies in Japan have restrictions on the transfer of their shares in accordance with the Companies Act. When transferring such restricted shares, regardless of the nationality of the parties to the transfer, it is necessary to go through the transfer approval procedures stipulated under the Companies Act (e.g., approval by the board of directors) at the company issuing the shares. Also, when a foreign investor transfers shares in a Japanese company to another foreign investor, an "approval" by the authorities is not required, although such transfer of shares may require prior notification under the FEFTA. As discussed above, upon screening of the notification, it is possible that the authorities may recommend that the investment be stopped or amended due to national security concerns, and may also order to stop or amend the investment if the foreign investor does not follow the recommendation (Please see Question 19 for more details).

• Are changes in shareholding publicly reported or publicly available?

The Companies Act of Japan requires joint stock companies to prepare a Shareholders' List, which includes the names of the shareholders and the number of shares held by each. It is sufficient that this Shareholders' List is kept at the head office of each company, and no notification to the authorities or a public inspection is required. As mentioned in Question 7, except to shareholders and creditors of the company, the right to inspect the Shareholders' List is not granted to outsiders. For listed companies, however, the names of the top 10 shareholders and their respective shareholding ratios are disclosed in an annual securities report that is publicly available. In addition, a person who acquires more than 5% of shares in a listed company is required to file a large shareholding report that is made available to the public. If such shareholding ratio changes by 1% or more, a report on the change in the large shareholding report must be filed. Unlisted companies do not have such a disclosure system, and it is difficult for anyone other than shareholders and creditors to know the composition of the shareholders and their shareholding ratios. As mentioned in Question 19, an acquisition of shares in a Japanese company by a foreign investor may require prior notification or an *ex post facto* investment report under the FEFTA, but such notifications or reports are not made available to the public.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

• With which agency is it required to be made?

The Ministry of Finance and the relevant Ministry in charge of the business concerned. In practice, an FDI filing is made through the Bank of Japan.

• How long does it take to obtain an FDI approval?

A foreign investor who has made a prior notification for its investment cannot close such investment until 30 days have passed from the day the said notification was received. This waiting period may be extended for up to five months. However, the waiting period may also be shortened if the investment concerned does not fall within the categories designated from the perspective of national security. In practice, the waiting period is normally shortened to two weeks, and the authorities may further shorten this period to four business days from the day the notification is received.

• Under what circumstances is the mandatory FDI filing required to be made?

If a foreign investor makes a certain type of investment (through FDI or specified acquisition) in a business operated by a Japanese company or its subsidiary in Japan, which business falls within the business sectors designated from the perspective of national security ("Designated Business Sectors"; the Designated Business Sectors are divided into "Core Business Sectors" and "Non-Core Business Sectors"), such investor should make a prior notification, through a resident of Japan acting as an agent, to the Minister of Finance and relevant Minister(s) who is in charge of the business concerned ("Competent Minister for the

Business"). The prior notification should be submitted within six months before the day the investment is to be made. In addition, any investor who submits a prior notification and then makes the subject investment after obtaining clearance should also submit an execution report to the Minister of Finance and the Competent Minister for the Business through the Bank of Japan. The Ministry of Finance has published, and regularly updates, a list of all listed companies setting forth whether they are doing businesses that (i) do not fall within the Designated Business Sectors, (ii) fall only within the Non-Core Business Sectors, or (iii) fall within the Core Business Sectors (the list as of May 2023 is available at https://www.mof.go.jp/english/policy/international_policy/fdi/Related_Guidance_and_Documents/20230519.html).

A foreign investor falling within the coverage of the FEFTA means any one of the following persons who carries out an FDI or a specified acquisition: (i) non-resident individuals; (ii) corporations and organizations incorporated under foreign laws and regulations; (iii) Japanese companies in which 50% or more of the voting rights are directly or indirectly held by (i) or (ii) (which include subsidiaries of such Japanese companies and any other companies in which 50% or more of the voting rights are held by such Japanese companies and/or their subsidiaries); (iv) partnerships in which 50% or more of the capital investments are provided by (i) or (ii); and (v) partnerships in which the majority of the partners executing the business are (i) or (ii).

The FDIs under the FEFTA include, for instance, (i) acquiring 1% or more shares or voting rights of a listed company; (ii) acquiring any number of shares of an unlisted company; (iii) giving consent to the appointment of a foreign investor or its closely-related person as a board member or corporate auditor of the investee company; (iv) consent by a foreign investor that it or its closely-related person will assume the office of a director or corporate auditor at the shareholders' meeting, and (iv) proposing or giving consent to the transfer or disposition of the investee company's business at the shareholder's meeting.

The Designated Business Sectors are as follows:

(a) Core Designated Business Sectors

■ Manufacturing

– Items related to weapons, aircraft (including drones), space development, nuclear facilities, and repairing and software ancillary thereto

– Dual use technologies

– Pharmaceuticals of communicable diseases and specially-controlled medical devices

– Permanent magnets and their material

– Machine tools and industrial robots

– Semiconductors and semiconductor manufacturing equipment

– Storage batteries and their materials

– Marine equipment (e.g., engines)

– Metal 3D printer manufacturing, metallic powder

■ Metal mining, smelting and refining of important mineral resources

■ Construction for improving and maintaining port facilities on designated remote islands

■ Fertilizer (e.g., potassium chloride) imports

■ Part of the following Sectors: Cybersecurity-related businesses, Electricity, Gas, Telecommunications, Water supplies, Railways, Petroleum

(b) Non-Core Designated Business Sectors

■ Part of the following Sectors: Cybersecurity-related businesses, Electricity, Gas, Telecommunications, Water supplies, Railways, Petroleum

■ Heat Supplies, Broadcasting, Public transport buses, Biological chemicals, Security services

■ Agriculture, forestry and fisheries, Leather product manufacturing, Aviation transportation, Maritime transportation

Further, any FDI intended to be undertaken by a foreign investor whose nationality or country of residence is NOT listed in Appendix 1 of the Order on Inward Direct Investment (173 countries and areas are listed therein as of November 2023), or those undertaken by the Iranian government, nationals or entities, which are subject to the prior approval of the U.N. Security Council, etc., require prior notification.

During the screening conducted by the government, if there is a concern that national security may be impaired, etc., the relevant Minister may recommend that the investment be stopped or amended. If the foreign investor does not abide by such Minister's recommendation, the Minister may order to stop or amend the investment. Also, if a prior notification is not made on an investment that requires prior notification, or a false prior notification is submitted, an order to

carry-out measures such as the sale of the acquired shares may be issued.

A foreign investor may be exempted from the prior notification requirements for its acquisition of shares in an unlisted company or of 1% or more of a listed company, if the company's business falls within the Designated Business Sectors but does not fall within the Core Business Sectors, and as long as the investor abides by the following requirements: (a) such investor or its closely-related person will not become board members of the investee company, (b) such investor will not propose to the general shareholders' meeting the transfer or disposition of the investee company's business activities within the Designated Business Sectors, and (c) such investor will not access non-public information about the investee company's technology relating to the business activities within the Designated Business Sectors.

If a foreign investor intends to acquire 1% or more but less than 10% of the shares or voting rights in a listed company and that company's business falls within the Core Business Sectors, such investor may be exempted from the prior notification requirements as long as it abides by, in addition to the above requirements under items (a) through (c), the following additional requirements: (d) regarding the business activities in the Core Business Sectors, the investor will not attend the investee companies' executive board or committees that make important decisions on these activities, and (e) regarding business activities in the Core Business Sectors, the investor will not make proposals, in written form, to the executive board of the investee companies or its board members requiring their responses and/or actions by certain deadlines.

Further, when a foreign investor makes an investment in a Japanese company whose business does not fall within the Designated Business Sectors, but the foreign investor obtains 10% or more of the shares or voting rights in such company, or when it is exempted from the prior notification requirements, then the foreign investor should make an *ex post facto* investment report, within forty-five days after the investment, to the Minister of Finance and the Competent Minister for the Business through the Bank of Japan.

• If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

A governmental authority will not review and block a transaction that is not subject to a mandatory filing (prior notification).

• If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction?

No. The FDI or specified acquisition covered under the FEFTA does not include the indirect acquisition of companies in Japan.

• Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

No.

20. What are typical exit transactions for foreign companies?

For foreign companies investing in Japanese companies, the most common type of exit transaction is the sale of shares. If a foreign company owns a local subsidiary, which is either a wholly-owned subsidiary or a joint venture company in Japan, and wishes to withdraw from its Japanese business, the foreign company may choose to dissolve and liquidate the local subsidiary or joint venture company, in addition to transferring the shares in the local company to a third party or joint venture partner.

When a foreign company holds a certain percentage of shares in a Japanese company, whether listed or unlisted, the exit transaction mainly involves the sale of such shares to a third party. In recent years, several global-based private equity funds have made a number of large-scale buyouts of Japanese companies. The typical exit transaction for such investments is through a trade sale (i.e., mainly, the sale of the shares to Japanese strategic buyers), but second buyouts (i.e., the sale of the shares to other private equity funds) have also been increasing these past years. IPOs are less common but please see Question 21 for more details.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

• on a domestic stock market?

The number of IPOs in Japan's domestic securities market has remained below 100 per year since 2008, when the financial crisis happened. This has been the case every year except for 2021 when the global financial easing and stock market rally had a positive

impact. In 2022, the Tokyo Stock Exchange ("TSE") restructured its markets with the intent to make the domestic securities market more attractive overall, but the number of IPOs that year still remained at 91, less than half the number during the IT bubble (204 in 2000). By market, IPOs on the TSE Growth Market, which was created through the above-described market restructuring as a market primarily for startups, accounted for more than 80% of the total number of IPOs in 2022, and by industry, the information and communications industry and the service industry accounted for 35% and 33% of the total IPOs, respectively.

• on a foreign stock market?

In the past, there were cases where large Japanese companies listed on the Japanese domestic market would duplicate listings on the U.S. market to increase their international visibility. Sony was listed on the New York Stock Exchange in the 70s, followed by Toyota and others. Since then, however, fewer Japanese companies have made duplicate listings in the U.S. as it has become easier for foreign investors to trade stocks in the Japanese securities market. In recent years, an increasing number of Japanese startups have been seeking to list on the NASDAQ from the outset, instead of listing on the Japanese domestic market first, in order to grab larger growth capital.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

For domestic parties in Japan, dispute resolution in domestic courts is the most common legal dispute resolution method provided for in M&A/Investment/JV agreements, rather than arbitration. As mentioned in Question 24, Japanese courts are generally regarded as reliable and cost-efficient dispute resolution bodies.

On the other hand, in M&A/Investment/JV agreements where a foreign party is involved, international arbitration is more frequently provided as a dispute resolution method. The main reasons for this are as follows:

(a) Arbitration awards are easier to enforce in a jurisdiction where the foreign party or its assets are located due to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), to which Japan is a party. As mentioned in Question 26, international arbitral awards rendered in the territory of another Contracting State will be recognized and enforced in Japan and, conversely, arbitral awards rendered in Japan will be recognized and enforced in the Contracting States. As for the enforcement of a foreign judicial judgement in Japan or the enforcement of a Japanese judicial judgment in foreign countries, it is generally said that this is more difficult compared to the enforcement of international arbitration awards. (b) Parties may appoint the arbitrators taking into account their professional backgrounds and personalities. (c) Parties may agree on the language to be used in the arbitration proceedings, which is advantageous to a foreign party who does not use Japanese. In contrast, Japanese language must be used in court proceedings in Japan and thus all documents must be written in Japanese and any evidence written in a foreign language must be translated into Japanese. (d) Arbitration proceedings are basically kept confidential. On the other hand, in court proceedings in Japan, the dates for the oral arguments and the rendition of judgement are open to the public and basically anyone may inspect the case records maintained in the courts.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

A typical contract dispute case in domestic courts usually takes about a little more than a year until final resolution. If appealed, it would take approximately six additional months.

According to data recently released by the Supreme Court of Japan, in 2022, the average length of proceedings for civil cases heard at district courts (courts of first instance), where both parties attended and judgements were rendered, is 14.6 months, and the average length of proceedings for civil cases where settlements were reached is 13.5 months. Also, the average length of proceedings for civil cases that were appealed to the high courts is 6.5 months.

As a side note, the percentage of civil cases appealed to the high courts from all civil cases that were heard and concluded with judgements at district courts is about 20.8%.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Yes. Japanese domestic courts are generally regarded as reliable and economical dispute resolution bodies. Judges in domestic courts are fair in adjudicating foreign

investors' rights under agreements and under the law. The World Justice Project's 2022 Rule of Law Index ranked Japan as the 6th least corrupt country out of 140 countries, and is regarded as a nation where government officials in the judicial branch do not use public office for private gain.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

No. To our best knowledge, there has been no instance of abuse of foreign investors by local businesses with the help of governmental agencies, nor by courts trying to take advantage of foreign investors.

26. Are international arbitral awards recognized and enforced in your country?

Yes. Japan is a party to the New York Convention, which basically requires Contracting States to recognize and enforce arbitration awards made in other countries. Since Japan made a reservation that it will apply the New York Convention in the recognition and enforcement of awards made in the territory of another Contracting State, international arbitral awards made in the territory of other Contracting States will be recognized and enforced in Japan.

To enforce an international arbitral award in Japan, a party must file a petition for the enforcement decision of an arbitral award with a Japanese domestic court, as explained below. Approximately two or three cases involving a petition for the enforcement decision of an arbitral award are filed with the Tokyo District Court every year. From 2004 through 2016, approximately 70% of such cases were recognized by the court, with one case being dismissed, and the rest of the cases withdrawn by the parties. Since more than half of the arbitration related cases in Japan have been handled by the Tokyo District Court, and although we do not have any data regarding enforcement decisions of arbitral awards handled by other courts in the country, it can be said that Japanese courts in general have taken a positive stance toward the enforcement of international arbitral awards.

The outline of the procedure for enforcing international arbitral awards in Japan is as follows:

(a) Enforcement Decision

A party must file a petition with the court for an enforcement decision (meaning, a decision allowing the civil execution based on an international arbitral award). The court will then be required to issue an enforcement decision, except where it finds any of the grounds for refusal set forth in the Arbitration Act. The standards for review, grounds for recognition and enforcement under the Arbitration Act are substantially the same as those set forth in the UNCITRAL Model Law.

(b) Compulsory Execution

An arbitral award with an enforcement decision has the same effect as a final and binding judicial judgment. Compulsory execution may be carried out based on such arbitration award upon petition by a party.

As a side note, interim measures ordered by an arbitral tribunal have also become enforceable in Japan due to recent revisions to the Arbitration Act in 2023.

27. Are there foreign investment protection treaties in place between your country and major other countries?

Yes. As of November 2023, Japan has signed 56 investment treaties and economic partnership agreements that contain a chapter on investment and 53 of these have already entered into force, except for those that have been terminated. Also, there is a private investment arrangement between Japan and Taiwan. Such treaties, agreements, and arrangement cover 81 countries/areas so far.

In general, such treaties and agreements provide for national treatment, most-favored-nation treatment, fair and equitable treatment and full protection and security, observance of obligation (umbrella clause), expropriation conditions, prohibition of performance requirements, freedom of money transfer, and dispute settlement mechanism including investor-state dispute settlement (ISDS).

Further, Japan is a party to the Energy Charter Treaty, which provides for similar terms as the ones in the general bilateral investment treaties on the protection of investments in the energy sector.

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