



Executive Summary

Japan is the world's third largest economy and the United States' fourth largest trading partner, and is a major destination for foreign direct investment (FDI). After nearly two decades of deflation and low growth, Japan's economy is showing signs of new vitality. The Liberal Democratic Party (LDP) Government of Prime Minister Shinzo Abe, elected in December 2012 on a platform of economic recovery and revitalization, has undertaken an ambitious program comprised of fiscal stimulus, monetary easing, and a reform-focused "growth strategy" to get Japan's economy moving again.

The Abe Government's Growth Strategy includes numerous measures intended to promote inward FDI, and the Prime Minister announced in June 2013 the goal of doubling Japan's inward FDI stock to 35 trillion yen by 2020. The focus on FDI promotion is encouraging, although the commitment of past governments to implement policies to improve Japan's investment climate has been inconsistent. Japan has the lowest ratio of FDI as a proportion of GDP of all Organization for Economic Cooperation and Development (OECD) member countries, something the Abe Government is working to change.

Japan officially welcomes foreign investment and has eliminated most formal restrictions governing FDI. The Ministry of Economy Trade and Industry (METI) and the Japan External Trade Organization (JETRO) assist foreign firms wishing to invest in Japan, and many prefectural and city governments have active programs to attract foreign investors. A number of factors make Japan a potentially attractive investment destination. Japan remains a large, wealthy, and sophisticated market. Risks associated with investment in many other countries, such as expropriation and nationalization, are not of concern in Japan. Japan has an independent judiciary, consistently applied commercial law, and strong Intellectual Property (IP) protections. Japan's civil courts enforce property and contractual rights and do not discriminate against foreign investors. The government has recently lowered capital gains, registration, and license taxes on real estate with an aim to increase the liquidity of Japanese real estate markets, and has reduced inheritance and gift taxes to promote intergenerational transfer of land and other real assets. Nearly all foreign exchange transactions—including transfers of profits, dividends, royalties, repatriation of capital, and repayment of principal—are freely permitted.

Japan is confronting the demographic realities of an aging and shrinking workforce. In response, the Government is pursuing policies to keep older workers in the labor force; broaden employment options and job retention for women, especially working mothers; and attract more skilled labor from abroad in certain sectors.

Foreign investors in the Japanese market still face numerous challenges, many of which relate more to prevailing social practice rather than government regulations. These include high tax rates; an insular and consensual business culture traditionally resistant to mergers and acquisitions (M&A); a lack of independent directors on many company boards; and cultural and

linguistic barriers. However, the Abe Government hopes that its initiatives will contribute to an increasingly open and investor-friendly business environment.

1. Openness To, and Restrictions on, Foreign Investment

Attitude Toward FDI

Japan is the world's third largest economy, the United States' fourth largest trading partner, and an important destination for U.S. foreign direct investment (FDI). The Government of Japan explicitly promotes inward FDI and has established formal programs to attract it. Soon after taking office, Prime Minister Shinzo Abe in early 2013 announced the government's intention to double Japan's inward FDI stock to 35 trillion yen by 2020. To that end, the government has included investment promotion as a major goal in its "Growth Strategy" package of business incentive measures and regulatory reforms rolled out in June 2013. In April 2014, the government constituted a new "FDI Promotion Council" comprised of ministers with major economic portfolios and augmented by private sector advisers. An advisory committee to the Council released a report with recommendations on how Japan can improve its investment climate (available at: http://www.invest-japan.go.jp/promotion/0425/sankou_02.pdf).

While these initiatives may contribute to attracting more FDI in the future, historically the Japanese government's commitment to implement policies to improve the climate for foreign investment has been inconsistent. Japan's stock of FDI, as a percentage of gross domestic product (GDP), stood at 3.4% at the end of 2012, compared with 30.6% on average for all Organization for Economic Cooperation and Development (OECD) member countries. While the FDI stock has risen substantially since the 1990's, Japan still has the lowest ratio of FDI as a proportion of GDP of any OECD member. The Ministry of Economy, Trade and Industry (METI) and the quasi-governmental Japan External Trade Organization (JETRO) are the lead agencies responsible for assisting foreign firms wishing to invest in Japan. Many prefectural and city governments also have active programs to attract foreign investors, but they lack many of the financial tools U.S. states use to attract investment.

The renewed interest of the Abe Government in attracting FDI is one component of the government's drive to revitalize the Japanese economy. Japan has largely recovered from the economic shocks caused by the March 2011 Tohoku earthquake and tsunami, but Japan continues to face the long-term challenges of low growth, deflation, and an aging population and shrinking workforce. The government seeks to restore Japan to a path of sustainable growth through its "Three Arrows" economic program combining fiscal stimulus, expansionary monetary policy, and regulatory and structural reform, collectively dubbed "Abenomics." Fiscal and monetary policies are credited with reigniting economic growth in 2013-14 and helping Japan exit deflation.

However, the reform component of "Abenomics," considered essential for long-term growth and competitiveness, has been slower to take shape. Additional impetus for reform could come from Japan's participation in the Trans-Pacific Partnership (TPP), an ambitious, high-standard free trade agreement currently under negotiation between the United States, Japan, and ten other countries. Japan joined the TPP negotiations as the newest member in July 2013. Japan must

also transition over time toward fiscal sustainability. According to the International Monetary Fund's World Economic Outlook, as of April 2014 Japan's gross public debt was estimated at about 243% of GDP – the highest percentage among advanced economies. The national Diet voted in 2012 to raise the consumption tax from 5% to 10% in stages by 2015 to help reduce the fiscal imbalance; the first stage, from 5% to 8%, was implemented on April 1, 2014.

In addition to business considerations relevant to investing in a mature economy with an aging population, foreign investors seeking a presence in the Japanese market or to acquire a Japanese firm through corporate takeover face a number of challenges, many of which relate more to prevailing practices comprising the business environment rather than to government regulations. These include an insular and consensual business culture that has traditionally been resistant to mergers and acquisitions (M&A); a lack of independent directors on many company boards; exclusive supplier networks and alliances between business groups that can restrict competition from foreign firms and domestic newcomers; cultural and linguistic challenges; and labor practices that tend to inhibit labor mobility.

The Abe Government seeks to address these issues under its "Growth Strategy," including improved corporate governance and enhanced labor mobility. (A complete copy of the Strategy can be accessed at http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/en_saikou_jpn_hon.pdf). The United States has discussed these and other issues relating to the investment environment with Japan in several different fora, including the U.S.-Japan Economic Harmonization Initiative; the U.S.-Japan Dialogue to Promote Innovation, Entrepreneurship and Job Creation; the U.S.-Japan Policy Cooperation Dialogue on the Internet Economy; and bilateral negotiations on non-tariff measures (NTMs) in connection with the TPP.

Other Investment Policy Reviews

OECD and UNCTAD have not conducted any recent investment policy reviews of Japan. Japan was subject to a WTO trade policy review in 2013.

Laws / Regulations on FDI

Major laws affecting incoming foreign investment in Japan include the Foreign Exchange and Foreign Trade Act, the Companies Act, and the Financial Instruments and Exchange Act. Japan has an independent judiciary, and Japan's civil courts enforce property and contractual rights and do not discriminate against foreign investors.

A series of revisions to Japan's legal code over the past decade have served to encourage inbound foreign investment through M&A activity, even if overall levels remain low by OECD standards. Significant measures include 2005 revisions to the Companies Act, which significantly expanded the types of corporate structures available in Japan as well as the variety of M&A transactions available for corporate consolidation and restructuring; and the 2007 Financial Instruments and Exchange Act (amended in 2008), which established a flexible regulatory system for financial markets and applied a uniform set of rules for similar financial instruments.

Industrial Strategy and Sector Promotion

Under a law passed in late 2013, Japan is moving to set up new “National Strategic Special Zones” (NSSZ) to implement selected deregulation measures intended to attract new investment and boost regional growth. In March 2014, the Special Zones Advisory Council chaired by Prime Minister Abe selected six initial locations for the new Zones, including the metropolitan areas of Tokyo, Osaka, and Fukuoka. In the Tokyo “international business hub” zone, covering the city of Tokyo as well as neighboring Kanagawa Prefecture and Narita City in Chiba Prefecture, proposed deregulation measures include revisions to building codes to encourage redevelopment projects. The full deregulation menu in the six locations is still taking shape, with details to be fleshed out over the course of 2014. Further details on the concept are available at: http://www.kantei.go.jp/jp/singi/tiiki/kokusentoc_wg/pdf/concepteng.pdf.

In an effort to promote tourism-related investment and facilities development as part of its “Growth Strategy,” the Abe Government in late 2013 introduced legislation in the Diet that would lead to legalization of casino gambling as part of “integrated resorts” construction. The initial bill would instruct the government to prepare implementing legislation and regulations for privately-operated casinos by 2016. The government hopes that the first “integrated resorts” can be completed and operating by the time Tokyo hosts the Summer Olympic Games in 2020. Aiming to increase the liquidity of Japanese real estate markets, the government in recent years has progressively lowered capital gains, registration, and license taxes on real estate. It also reduced inheritance and gift taxes to promote intergenerational transfer of land and other real assets. Japan's real estate sector experienced a painful contraction following the credit crunch of 2008 as prices declined. The real estate market, particularly for premium properties, has rebounded after the Bank of Japan (BOJ) began buying real estate investment trust (REIT) shares in 2010. In April 2013 the BOJ increased its purchases of riskier assets as part of its aggressive monetary easing policy, and as of December 2013, the BOJ had 140 billion yen of REIT shares on its books, a very small portion of BOJ's total assets of 224 trillion yen but up substantially from just 2.2 billion yen in 2010. However, the real estate market remains characterized by very limited numbers of large real estate deals between unrelated parties. Additionally, U.S. investors have reported isolated instances of criminal elements interfering with real estate transactions in Japan, particularly those involving distressed assets.

Limits on Foreign Control

Japan has gradually eliminated most formal restrictions governing FDI. One remaining legal restriction limits foreign ownership in Japan's former land-line monopoly telephone operator, Nippon Telegraph and Telephone (NTT), to 33%. Japan's Radio Law and separate Broadcasting Law also limit foreign investment in broadcasters to 20%, or 33% for broadcasters categorized as “facility-supplying.” Foreign ownership of Japanese companies invested in terrestrial broadcasters will be counted against these limits. These limits do not apply to communication satellite facility owners, program suppliers or cable television operators.

While not a limit on foreign control per se, Japan does continue to restrict development of retail and commercial facilities to prevent excessive concentration of development in the environs of Tokyo, Osaka, and Nagoya, and to preserve agricultural land. Conversely, many prefectural governments outside the largest urban areas make property available for development in public

industrial parks. Japan's zoning laws give local officials and residents considerable discretion to screen almost all aspects of a proposed building. In some areas, these factors have hindered real estate development projects and led to construction delays and higher building costs, particularly in cases where proposed new retail development would affect existing businesses.

Privatization Program

Japan has privatized many major state-owned enterprises over the last two decades. In other instances, it has reorganized government-run businesses as separate companies, although the government remains the sole or primary shareholder of the reorganized entity.

A bill to allow the sale of airport operation management rights for 27 airports owned and operated by the central government, including large regional airports like Sendai and Hiroshima as well as 67 airports owned and operated by local governments, passed into law on June 19, 2013. Under the new law, local government operators of the airports must initiate the request for privatization of management, and the request must be approved by the central government after a stakeholder review process. If approved, private firms would be able to bid on operation rights at these airports while the central or local governments would maintain ownership of the land and buildings.

In spring 2014, an advisory panel to the Ministry of Finance began discussions for an Initial Public Offering (IPO) of Japan Post (JP) Holdings Co. Ltd., holding company for the Japan Post group. The first official step in the IPO process will be selection of one or more private sector firms as managers for the IPO, perhaps by fall 2014, with full IPO preparations expected to be completed by sometime in 2015. Separate IPOs are eventually contemplated for JP Holdings' two major financial subsidiaries, JP Bank and JP Insurance, though timing remains unclear.

Screening of FDI

The Foreign Exchange and Foreign Trade Act governs investment in sectors deemed to have national sovereignty or national security implications. If a foreign investor wants to acquire over 10% of the shares of a listed company in certain designated sectors, it must provide prior notification (and thus obtain specific approval) of the intended transaction to the Ministry of Finance and the ministry that regulates the specific industry. Designated sectors include agriculture, aerospace, forestry, petroleum, electric/gas/water utilities, telecommunications, and leather manufacturing. Amendments to the prior notification and reporting requirements, effective in 2009, reduced the administrative burden on foreign investors so as to facilitate inward investment. However, U.S. private equity firms can still face challenges when seeking to make significant investment in “strategic industries” deemed important to Japan’s national interests.

Competition Law

Several sections of the Japanese Anti-Monopoly Act (AMA) are relevant to FDI. The stated purpose of these provisions is to restrict shareholding, management, joint venture, and M&A activities that may constitute unreasonable restraints on competition or involve unfair trade

practices. The Japanese Government has emphasized that these provisions are not intended to discriminate against foreign companies or discourage FDI.

Investment Trends

Outbound investment continued climbing during 2012 as Japanese companies' large cash holdings combined with low global equity values and the strong yen supported their active merger and acquisition (M&A) activity abroad. Meanwhile, investment activity inside Japan showed a modest increase in numbers of M&A transactions during 2013, with the largest number of deals since 2009. Preliminary 2013 statistics for FDI in Japan show a net outflow of about 129 billion yen for the year. Notwithstanding the imbalance between inward and outward FDI, and the increase in M&A activity by Japanese firms overseas, Japan's outward FDI as a percentage of GDP also remains among the lowest of major OECD members.

Table 1: The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or value	Website Address
TI Corruption Perceptions index	2013	(18 of 177)	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2013	(25 of 178)	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	(27 of 189)	http://doingbusiness.org/rankings
Global Innovation Index	2013	(22 of 142)	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	USD 47,880	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

Foreign Exchange

Generally, all foreign exchange transactions to and from Japan – including transfers of profits and dividends, interest, royalties and fees, repatriation of capital, and repayment of principal – are freely permitted. Japan maintains an ex-post facto notification system for foreign exchange transactions that prohibits specified transactions, including certain foreign direct investments (e.g., from countries under international sanctions) or others that are listed in the appendix of the Foreign Exchange and Foreign Trade Act.

Japan has not intervened in the foreign exchange markets in over two years. The Japanese government joined the G-7 statement of February 2013, affirming that economic policies would be based on domestic objectives using domestic instruments and would not target exchange rates. Since then, Japanese officials have clearly ruled out purchases of foreign assets as a monetary policy tool and have largely refrained from public comment on the desired level of the exchange rate. Japan was also part of the subsequent G-20 consensus and statement at the February 2013 Finance Ministers and Central Bank Governors Meeting in Moscow that countries would not target exchange rates for competitive purposes. This commitment was affirmed by G-20 Leaders in September 2013 at the St. Petersburg Summit.

Terrorism Finance / Money Laundering / Remittances

Japan is an active partner in combating terrorist financing. In coordination with other OECD members, Japan has strengthened due-diligence requirements for financial institutions and has had a "Know Your Customer" law since 2002. In April 2011, Japan amended its basic Anti-Money Laundering (AML) law, the Criminal Proceeds Act (CPA), to improve customer due diligence requirements, including requiring financial institutions to identify the customer's name, address, and date of birth; and to verify the purpose of a transaction, business activities, and beneficial owners. These requirements came into effect in April 2013.

Customers wishing to make cash transfers exceeding 100,000 yen must do so through bank clerks, not ATMs, and must present photo identification. However, Japan has yet to fully rectify deficiencies noted in the 2008 Financial Action Task Force (FATF) evaluation of Japan's anti-money-laundering and terrorist finance regime, particularly on customer due diligence, international cooperation, freezing terrorist assets, and criminalizing terrorist finance. Japan has begun to implement a risk-based approach to AML/CFT. Following its investigation into three major Japanese banks' relations with organized crime organizations, the Financial Services Agency (FSA) in December 2013 implemented a new financial monitoring policy for financial institutions. The policy calls on institutions to conduct enhanced due diligence for higher-risk customers, business relationships, and transactions, as well as to sever relationships with suspicious entities and individuals. This is an improvement over the April 2011 amendments to the CPA that called for financial institutions to verify a customer's assets and income in certain higher-risk situations, but only delineated those situations as being instances in which the use of false identity was suspected, rather than those presented by such factors as business type, customer location, or type of transaction.

3. Expropriation and Compensation

In the post-war period, the Japanese Government has not expropriated any enterprises and the expropriation or nationalization of foreign investments in Japan is extremely unlikely. Historically, nationalizations of enterprises have been rare and have all involved Japanese firms. These include the 1998 nationalization of two large, capital-deficient Japanese banks and the 2002 nationalization of two failed Japanese regional banks as part of the government's efforts to clean up the banking system after its near-collapse in 1998. The government also nationalized Japan Airlines in 2010 as a part of a two-year corporate reorganization plan. The airline has since been re-privatized.

Most recently, in the wake of the March 2011 nuclear accident at the Fukushima Daiichi Nuclear Power Station, the Tokyo Electric Power Company (TEPCO) was placed under “temporary public control” when the government injected \$12.5 billion through the Nuclear Damage Liability Facilitation Fund to procure a 50.1% stake in the company in May 2012. Total government support for TEPCO and its compensation payments to victims and evacuees of the nuclear accident reached \$37 billion in December 2012. The utility is scheduled to pay back the funds over time, but the plan is contingent on the uncertain restart of TEPCO’s large nuclear plant on Japan’s west coast.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Japan has a fully independent judiciary and a consistently applied body of commercial law. An Intellectual Property High Court was established in 2005 to expedite trial proceedings in IP cases. Foreign judgments are recognized and enforced by Japanese courts under certain conditions.

Bankruptcy

An insolvent company in Japan can face liquidation under the Bankruptcy Act or take one of four roads to reorganization: the Civil Rehabilitation Law; the Corporate Reorganization Law; corporate reorganization under the Commercial Code; or an out-of-court creditor agreement. The Civil Rehabilitation Law focuses on corporate restructuring in contrast to liquidation, provides stronger protection of debtor assets prior to the start of restructuring procedures, eases requirements for initiating restructuring procedures, simplifies and rationalizes procedures for the examination and determination of liabilities, and improves procedures for approval of rehabilitation plans. Amendments to Japan’s Corporate Reorganization Law made corporate reorganization for large companies more cost-efficient, speedy, flexible and available at an earlier stage. Previously, most corporate bankruptcies in Japan were handled through out-of-court creditor agreements because court procedures were lengthy and costly. Since bankruptcy trustees had limited powers to oversee restructuring, most judicial bankruptcies ended in liquidation, often at distressed prices. Out-of-court settlements in Japan tend to save time and expense, but can sometimes lack transparency and fairness. In practice, because 100% creditor consensus is required for out-of-court settlements and the court can sanction a reorganization plan with only a majority of creditors’ approval, the last stage of an out-of-court settlement is often a request for a judicial seal of approval.

Investment Disputes

There have been no major bilateral investment disputes since 1990.

International Arbitration

There have been no cases of international binding arbitration of investment disputes between foreign investors and the Government of Japan since 1952.

ICSID Convention and New York Convention

Japan has been a contracting member of the Convention on the Settlement of Investment Disputes (ICSID Convention) since 1967 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) since 1961.

Duration of Dispute Resolution

As in other countries, legal proceedings in Japan can be slow, and depending on the circumstances of the case, Japanese courts may be ill-suited for litigation of investment and business disputes. Japanese courts lack powers to compel witnesses to testify or a party to comply with an injunction. Timely temporary restraining orders and preliminary injunctions are difficult to obtain. Courts have the power to encourage mediated settlements and there is a supervised mediation system. However, this process is often time-consuming and judges transfer frequently, so continuity is often lost. As a result, it is common for companies to seek to settle cases out of court.

5. Performance Requirements and Investment Incentives

Performance Requirements

Japan does not maintain performance requirements or requirements for local management participation or local control in joint ventures.

Investment Incentives

JETRO operates six Invest Japan Business Support Centers in major urban areas to provide investment-related information and "one-stop" support services to foreign companies interested in investing in Japan. (Detailed information is available at <http://www.jetro.go.jp/en/invest>.) Most national ministries also have information desks to help guide potential investors in navigating Japanese Government administrative procedures. Many city or regional governments also work to attract foreign capital through outreach to prospective foreign investors, business start-up support services, and limited financial incentives.

The Government of Japan has sought to encourage investment in the Tohoku region that was devastated by the March 11, 2011 earthquake and tsunami. The Diet has allocated 25 trillion yen to date for Tohoku region reconstruction; the appropriations cover the five years from FY2011 to FY2015 (designated as the "concentrated reconstruction period"). Under GOJ guidelines, participation in Tohoku reconstruction should be open to foreign contractors and investors. Japan's Reconstruction Agency, established in February 2012, maintains a website on the reconstruction status at <http://www.reconstruction.go.jp/english/>, and accepts queries at <https://www.reconstruction.go.jp/enquete/opinion/enquete.html> from the private sector, including foreign companies, interested in investing in the disaster-hit regions.

Local governments in the Tohoku region play a central role in formulating reconstruction plans and implementing nationally-approved measures. Local municipalities may choose from a given menu of regulatory, tax relief, and other measures from which to craft special economic zones specific to their needs. As of February 2014, 106 reconstruction promotion plans that feature special zones have been approved; the complete list is available on the Reconstruction Agency website. Each locality determines the aspects of its own special zone, so tax incentives and relaxed zoning may vary from locality to locality. Companies wishing to participate in Tohoku reconstruction should be aware of these circumstances, and may wish to seek a Japanese partner to negotiate the various zones and research opportunities through the diverse proposals presented by local governments.

While Tohoku reconstruction efforts present significant potential opportunities for investors, challenges remain. The Reconstruction Agency reports that public infrastructure reconstruction has largely progressed according to the projected plan and time schedule, but shortages of skilled labor and construction materials have hindered progress in housing relocation and reconstruction. As a result, many local municipalities have been unable to begin housing projects and their allocated budgets have not been used. The GOJ is working with local governments to address these challenges.

6. Right to Private Ownership and Establishment

Foreign and domestic private enterprises have the right to establish and own business enterprises and engage in all forms of remunerative activity. However, Article 821 of the 2005 Companies Act appears to prohibit branches of foreign corporations from engaging in transactions in Japan "on a continuous basis." This wording has created uncertainty among foreign corporations that conduct their primary business in the Japanese market through a branch company. The Japanese Diet subsequently issued a clarification of the legislative intent of Article 821 that makes clear the provision should not apply to the activities of legitimate entities, and the Government has said it will ensure Article 821 will not adversely affect the operations of foreign companies duly registered in Japan and conducting business in a lawful manner.

7. Protection of Property Rights

Real Property

In Japan, secured interests in real property are recognized and enforced. Mortgages are a standard lien on real property, and they are reliably recorded. On the World Bank's "Doing Business Report," Japan ranks 66th for "ease of registering property." This is a result of the many bureaucratic steps and fees associated with purchasing improved real property in Japan, even when it is already registered and has a clear title. The required amount of documentation for property purchase can be burdensome. Additionally, it is common practice in Japan for appraisal values to be lower than the actual sale value, increasing the deposit required of the purchaser as the bank will finance only up to the appraisal value.

Intellectual Property Rights

Intellectual property (IP) in Japan enjoys relatively strong legal protection and good enforcement, and Japan is not listed in USTR's Special 301 report. However, prospective investors should be aware of costs and procedures associated with IP registration, and companies doing business in Japan should be clear about rights and obligations with respect to IP in any trading or licensing agreements.

Registering Patents, Trademarks, Utility Models and Designs

Japan has worked to improve IP registration procedures in recent years, including through revisions to Japanese law to make patent and trademark registrations easier and less costly to obtain. Japan is a signatory to the Madrid Protocol, which provides for a cost-effective and efficient way for trademark holders to ensure protection for their marks in multiple countries through the filing of one application with a single office, in one language, with one set of fees, in one currency.

Prompt filing of patent applications is very important. Printed publication of a description of the invention anywhere in the world, or knowledge or use of the invention in Japan prior to the filing date of the Japanese application, could in some circumstances preclude the granting of a patent. Japan grants patents on a first-to-file basis. It accepts initial filings in English (to be followed by a Japanese translation), but companies should be careful as translation errors can have significant negative consequences. Unlike the United States, where examination of an application is automatic, in Japan an applicant must request examination of a patent application within three years of filing. Japan's Utility Model Law allows registration of utility models (a form of minor patent) and provides a 10-year term of protection from the date of filing. Under a separate design law, effective April 2007, protection is available for designs for a 20-year term from the date of registration.

The Japanese Patent Office publishes all patent applications 18 months after filing, and after the patent is granted it is published in the Patent Gazette. The patent is valid for 20 years from the date of filing. Since 2008 the Patent Prosecution Highway (PPH) has allowed filing of streamlined applications for inventions determined to be patentable in other participating countries, reducing the average processing time. Semiconductor chip design layouts are protected for 10 years under a special law, if registered with the Japanese "Industrial Property Cooperation Center" – a government-established public corporation.

Unfair Competition and Trade Secrets

The Unfair Competition Prevention Law provides for protecting trademarks prior to registration. The owner of the mark must demonstrate that the mark is well known in Japan and that consumers will be confused by the use of an identical or similar mark by an unauthorized user. The law also provides some protection for trade secrets, such as know-how, customer lists, sales manuals, and experimental data. Recent amendments to the law provide for injunctions against wrongful use, acquisition, or disclosure of a trade secret by any person who knew, or should have known, the information in question was misappropriated. Criminal penalties were also strengthened. In 2011, Japan enacted a partial amendment to the Unfair Competition Prevention Law that protects trade secrets from being disclosed during court trials and makes it illegal to sell

items designed to circumvent technological protection measures, even if the device has other legal uses.

Copyrights

Japan maintains a non-formality principle for copyright registration; i.e., registration is not a pre-condition to the establishment of copyright protection. However, the Cultural Affairs Agency maintains a registry for such matters as date of first publication, date of creation of program works, and assignment of copyright. United States copyrights are recognized in Japan by international treaty.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Resources for Rights Holders

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Embassy Tokyo's List of Lawyers:

<http://japan.usembassy.gov/e/acs/tacs-7113.html>

8. Transparency of the Regulatory System

The Japanese economy continues to suffer from over-regulation, which can restrain potential economic growth, raise the cost of doing business, restrict competition, and impede investment. It also increases the costs for Japanese businesses and consumers. Over-regulation underlies many market access and competitive problems faced by U.S. companies in Japan.

The United States has for several years called on Japan to make improvements in its regulatory system to support domestic reform efforts and ensure universal access to government information and the policymaking process.

The Japanese Government has taken steps to improve its public comment procedures, but these improvements are not uniform throughout the government. The United States continues to urge Japan to apply consistently high standards of transparency, including by issuing new rules to ensure transparency and access for stakeholders in the rulemaking process; by allowing effective public input into the regulatory process; and by giving due consideration to comments received. The United States also has asked Japan to lengthen its public comment period and to require ministries and agencies to issue all new regulations or statements of policy in writing or provide applicable interpretations to interested stakeholders in plain language.

In the financial sector, the Financial Services Agency (FSA) has made efforts to expand the body of published written interpretations of Japan's financial laws, and has improved outreach to the private sector regarding these changes.

The United States has engaged in bilateral working-level discussions since 2002 in an effort to encourage the Japanese Government to promote deregulation, improve competition policy, and undertake administrative reforms that could contribute to sustainable economic growth, increase imports and foreign direct investment into Japan. Most recently, the United States has engaged Japan on these issues in the context of bilateral talks on non-tariff measures (NTMs) in connection with the TPP free trade negotiations. The National Trade Estimate Report on Foreign Trade Barriers, issued by the Office of the U.S. Trade Representative (USTR), contains a description of Japan's regulatory regime as it affects foreign exporters and investors.

9. Efficient Capital Markets and Portfolio Investment

Stock Exchanges

Japan maintains no formal restrictions on inward portfolio investment, and foreign capital plays an important role in Japan's financial markets. However, many company managers and directors resist the actions of activist shareholders, especially foreign private equity funds, potentially limiting the attractiveness of Japan's equity market to large-scale foreign portfolio investment. Some firms have taken steps to facilitate the exercise of shareholder rights by foreign investors, including the use of electronic proxy voting. The Tokyo Stock Exchange (TSE) maintains an Electronic Voting Platform for Foreign and Institutional Investors, the IJC platform, in which more than 430 listed companies participated as of December 2013. All holdings of TSE-listed stocks are required to transfer paper stock certificates into electronic form.

In part to improve their competitiveness internationally, Japan's two biggest stock exchanges, Tokyo and Osaka, completed a merger on January 1, 2013 to form the Japan Exchange Group (JPX). Under JPX, both exchanges continue to operate, with cash equity trading consolidated on the TSE in July 2013 and derivatives trading consolidated on the Osaka Exchange as of March 2014. As a result of the merger, at the end of 2013, 3,406 companies were listed in TSE, compared to 2,293 in December 2013. TSE reports that only five companies delisted in 2013.

Environment for Mergers and Acquisitions (M&A)

Japan's aversion to M&A is receding gradually, accelerated by the unwinding of previously extensive corporate cross-shareholding networks between banks and corporations in the same business family, improved accounting standards, and government mandates that began in the late 1990s that require banks to divest cross-holdings above a set threshold. The majority of M&A over the past decade has been driven by the need to consolidate and restructure mature industries or in response to severe financial difficulties. In response to the Abe Government's economic program, which heightened interest in business opportunities in Japan, M&A activity increased in 2013.

Friendly transfer of wholly-owned or majority-owned subsidiaries remains by far the more common form of M&A in Japan. Similarly, unlisted, owner-operated firms – which traditionally would only sell out as a last resort before bankruptcy – are becoming more amenable to acquisition, including by foreign investors. Nevertheless, there remains a strong preference among Japanese managers and directors for M&A that preserves the independence of the target company. If companies are forced to seek an acquirer, they are often most comfortable receiving an investment from or being acquired by a domestic firm with which they have a pre-existing business relationship.

Hostile Takeovers

After the Companies Act took full effect in 2007, expanding the types of M&A structures available in the Japanese market, many companies adopted defensive measures against hostile takeovers. The prevalence of such measures has since declined, although hostile takeovers remain relatively uncommon in Japan's consensus-driven business culture.

Changes in Corporate Governance

Reflecting growing concern within Japan that weaknesses in existing systems of corporate governance were a disincentive for foreign investors, the Japanese Government in the last few years has taken an increasingly strong stance towards corporate misconduct. In March 2012, the Financial Services Agency (FSA) implemented an amendment to corporate disclosure rules to require disclosure of information on the degree of independence of outside directors and outside company auditors, such as the relationship between the company and the current or previous employer of those outside directors/auditors. The FSA has recently published draft amendments aimed at introducing systems to help domestic trust banks and pension funds verify financial information provided by discretionary investment management companies, as well as increasing the volume of information which discretionary investment management companies are required to provide. In addition, the FSA proposes implementing heavier penalties for false statements made by discretionary investment management companies and introducing a more rigorous system of regulatory supervision and inspection.

The Liberal Democratic Party included the goal of improved corporate governance in its campaign platform for the December 2012 election that brought the Abe Government to power, and the Government reiterated that objective in the Growth Strategy released in June 2013. In December 2013, the Government submitted to the Diet proposed amendments to the Companies Act that would encourage listed companies to appoint at least one outside director to their

boards, or to publicly explain in their annual report and at their annual shareholders meeting why the company considers the appointment of an outside director to be inappropriate (known as the “comply or explain” provision). The amendments also create an alternative structure where companies may institute an audit and supervisory committee (*kansa kantoku iinkai setchi gaisha*) whose members do not serve as directors. The amendment bill was still under Diet consideration as of April 2014.

While the proposed amendments are viewed as a positive step, the international business community has expressed concern that they do not go far enough to strengthen corporate governance, particularly as they would not make appointment of outside directors mandatory. In spring 2014 the LDP’s Research Committee initiated discussions on a strengthened corporate governance “code of conduct” for possible inclusion in a new round of Growth Strategy measures to be announced in June 2014. While details are pending, one issue reportedly under discussion is restriction of cross-shareholding between Japanese listed companies, which complicates market-based M&A activity and reduces the potential impact of shareholder-based corporate governance.

The Tokyo Stock Exchange (TSE) has taken steps over time to require stronger corporate governance measures by listed companies. These include a revised (2009) Principles of Corporate Governance for Listed Companies, which added points to enhance corporate governance not only of the parent company, but of the corporate group as a whole; strengthen statutory auditors’ functions; and identify suitable governance models. In March 2012, TSE relaxed rules for listed firms’ earnings forecasts, giving firms more flexibility to choose items to include, how to present items, and which periods to cover. The changes are intended to steer firms preparing disclosure in the direction of dialogue with investors, rather than “perfunctory conformity with rules.” In line with Companies Act amendments currently before the Diet, the TSE in late 2013 implemented its own “comply or explain” requirement on outside directors for all TSE listed companies. As of March 2014, more than 60% of the companies listed in the first section of the TSE reported having at least one outside director on their boards, although less than 50% of companies had an independent outside director.

Under Japan’s Companies Act and the Industrial Revitalization Law, publicly traded companies have the option of adopting a U.S.-style corporate governance system instead of the traditional Japanese statutory auditor (*kansayaku*) system of corporate governance. This system requires the appointment of executive officers and the establishment of a board committee system in which at least the audit, nomination, and compensation committees are composed of a majority of outside directors. Initially available only under the Industrial Revitalization Law and effectively limited to distressed companies, the Companies Act makes these options available to all listed companies, but to date very few listed Japanese companies have adopted the board committee system.

Accounting and Disclosure

Consolidated accounting has been mandatory since 1999 and “effective control and influence” standards have been introduced in place of conventional holding standards, expanding the range of subsidiary and affiliated companies included for the settlement of accounts. Consolidated

disclosure of contingent liabilities, such as guarantees, is also mandatory. All marketable financial assets held for trading purposes, including cross-shareholdings and other long-term securities holdings, are recorded at market value. Companies are required to disclose unfunded pension liabilities by valuing pension assets and liabilities at fair value. Fixed asset impairment accounting, in effect since 2005, requires firms to record losses if the recoverable value of property, plant, or equipment is significantly less than book value.

In December 2009, the FSA issued an order allowing companies to submit their financial statements based on international accounting standards. This order prepares the legal groundwork for a complete switch to International Financial Reporting Standards (IFRS) in the future, but FSA has not made a final decision on the mandatory introduction of IFRS.

Taxation and M&A

On April 1, 2014, the government raised the national consumption tax rate from 5% to 8%, with a second increase from 8% to 10% planned for October 2015. Japan's standard tax rate for individual capital gains is 20%. Starting January 1, 2014, earned income from new investments of up to 1 million yen will be exempt from capital gains and dividend tax for up to five years. The Nippon Investment Saving Account (NISA) program will be in effect until December 31, 2018, during which time taxpayers can make an investment of up to 1 million yen in stocks and stock funds each year, aggregating to a maximum of 5 million yen in total.

Japanese business associations and the foreign investor community have urged the government to reduce the effective tax rate for corporate income, currently about 35%. They note that Japan's corporate tax rate is substantially higher than that of other Asian countries (about 25% in China and South Korea, and 17% in Singapore). The government has discussed corporate tax reform in the context of the Growth Strategy but has not yet proposed legislation.

In June 2013, Japan signed the Foreign Account Tax Compliance Act (FATCA) bilateral agreement requiring Japanese financial institutions to report to the IRS information about financial accounts held by U.S. taxpayers, or by entities in which U.S. taxpayers hold a substantial ownership interest.

Credit Markets

Domestic and foreign investors have free access to a variety of credit instruments at market rates. Most foreign firms obtain short-term credit from Japanese commercial banks or one of the many foreign banks operating in Japan. Medium-term loans are available from commercial banks or from trust banks and life insurance companies. Large foreign firms tend to use foreign sources for long-term financial needs.

10. Competition from State-Owned Enterprises

Japan has privatized most former state-owned enterprises. Regarding the companies of the Japan Post group, postal privatization laws were initially enacted in 2005; under 2012 amendments, the Government remains under legal obligation to fully privatize Japan Post Insurance and Japan Post Bank, but without a fixed deadline. A government subcommittee began preliminary discussions in spring 2014 on preparations for an IPO for Japan Post Holdings, perhaps to be conducted in 2015.

The U.S. Government has continued to raise concerns about the preferential treatment that Japan Post entities receive compared to private sector competitors and the impact of these advantages on the ability of private companies to compete on a level playing field. A full description of U.S. Government concerns with regard to Japan Post, and efforts to address these concerns, is available in USTR's 2014 National Trade Estimate (NTE) report for Japan.

Japan does not have a sovereign wealth fund (SWF).

11. Corporate Social Responsibility

Awareness of corporate social responsibility among both producers and consumers in Japan is high and growing, and foreign and local enterprises generally follow accepted CSR principles. Business organizations also actively promote CSR.

12. Political Violence

Political violence is rare in Japan. Acts of political violence involving U.S. business interests are virtually unknown.

13. Corruption

Japan's penal code covers crimes of official corruption. An individual convicted under these statutes is, depending on the nature of the crime, subject to prison sentences up to three years and possible fines up to 2.5 million yen (for the offering party), or prison sentences up to seven years and mandatory confiscation of the monetary equivalent of the bribe (for the recipient). With respect to corporate officers who accept bribes, Japanese law also provides for company directors to be subject to fines and/or imprisonment, and some judgments have been rendered against company directors.

The direct exchange of cash for favors from government officials in Japan is extremely rare. However, the web of close relationships between Japanese companies, politicians, government organizations, and universities has been said to foster an inwardly-cooperative business climate that is conducive to the awarding of contracts, positions, etc. within a tight circle of local players. This phenomenon manifests itself most frequently and seriously in Japan through the rigging of bids on government public works projects.

Japanese authorities have acknowledged the problem of bid-rigging and have taken steps to address it. Building on the longstanding laws on bribery of public officials and misuse of public funds, the 2006 amendments to the 2003 Bid-Rigging Prevention Act, now called the Act on Elimination and Prevention of Involvement in Bid-Rigging, aimed specifically to eliminate official collusion in bid rigging. The law authorizes the Japan Fair Trade Commission (JFTC) to demand central and local government commissioning agencies take corrective measures to prevent continued complicity of officials in bid-rigging activities, and to report such measures to the JFTC. The Act also contains provisions concerning disciplinary action against officials participating in bid rigging and compensation for overcharges when the officials caused damage to the government due to willful or grave negligence. The Act prescribes possible penalties of

imprisonment for up to five years and fines of up to 2.5 million yen. Nevertheless, questions remain as to whether the Act's disciplinary provisions are strong enough to ensure officials involved in illegal bid-rigging are held accountable.

Complicating efforts to combat bid rigging is the phenomenon known as *amakudari*, whereby government officials retire into top positions in Japanese companies, frequently in industries that they once regulated. *Amakudari* employees are particularly common in the financial, construction, transportation, and pharmaceutical industries, among Japan's most heavily regulated industries. The 2007 revised National Public Service Act aimed at limiting involvement of individual ministries in finding post-retirement employment for its officials and more transparent administrative procedures may somewhat ameliorate the situation. However, the LDP administration that came to power in December 2012 has not prioritized the issue, and *amakudari* practices persist.

OECD Convention on Combatting Bribery

Japan has ratified the OECD Anti-Bribery Convention, which bans bribing foreign government officials. The OECD has identified deficiencies in Japan's implementing legislation, some of which the Japanese Government has taken steps to rectify. In 2004, Japan amended its Unfair Competition Prevention Law to extend national jurisdiction to cover the crime of bribery and in 2006 made changes to the Corporation Tax Law and the Income Tax Law expressly to deny the tax deductibility of bribes to foreign public officials. However, there are continuing concerns over the effectiveness of Japan's anti-bribery enforcement efforts, particularly the very small number of cases prosecuted by Japanese authorities compared to other OECD members.

14. Bilateral Investment Agreements

As of March 2014, Japan has concluded or signed bilateral investment treaties (BITs) with 22 trading partners: Egypt, Sri Lanka, China, Hong Kong SAR, Turkey, Pakistan, Bangladesh, Russia, Mongolia, Vietnam, South Korea, Cambodia, Laos, Uzbekistan, Peru, Colombia, Papua New Guinea, Kuwait, Iraq, Saudi Arabia, Mozambique and Myanmar. There is also a trilateral agreement with China and South Korea. The Japanese Government is currently negotiating bilateral BITs with Kazakhstan, Angola, and Uruguay, and is preparing to initiate BIT negotiations with Qatar, Algeria, and Ukraine. The 1953 U.S.-Japan Treaty of Friendship, Commerce, and Navigation gives national treatment and most favored nation treatment to U.S. investments in Japan. In July 2013, Japan joined negotiations for the Trans-Pacific Partnership (TPP) free trade agreement with 11 other member countries, including the United States. The TPP, when completed, will include provisions governing investment.

The United States and Japan have a bilateral tax treaty. The current treaty allows Japan to tax the business profits of a U.S. resident only to the extent those profits are attributable to a "permanent establishment" in Japan. It also provides measures to mitigate double taxation. This "permanent establishment" provision, combined with Japan's currently high 40 percent corporate tax rate, serves to encourage foreign and investment funds to keep their trading and investment operations off-shore.

Local branches of foreign firms are generally taxed only on corporate income derived within Japan, whereas domestic Japanese corporations are taxed on their worldwide income. Calculations of taxable income and allowable deductions, and payments of the consumption tax (sales tax) for foreign investors are otherwise the same as those for domestic companies. Corporate tax rules classify corporations as either foreign or domestic depending on the location of their "registered office," which may be the same as – or a proxy for – the place of incorporation.

In January 2013, the United States and Japan signed a revision to the bilateral income tax treaty to bring it into closer conformity with the current tax treaty policies of the United States and Japan. The revision is awaiting ratification by the U.S. Congress.

15. OPIC and Other Investment Insurance Programs

U.S. OPIC insurance and finance programs are not available in Japan. Japan is a member of the Multilateral Investment Guarantee Agency (MIGA). Japan's capital subscription to MIGA is the second largest, after the United States.

16. Labor

Since World War II, employment practices in Japan's large companies centered on the principles of lifetime employment, seniority-based wages, and enterprise unions. However, the demographic reality of an aging populations and shrinking workforce is forcing many firms to sharply reduce lifetime employment guarantees and seniority-based wages in favor of merit-based pay scales and limited-term contracts. Generally there is adequate availability of skilled labor, although some shortages are beginning to emerge, particularly in the construction industry. Nevertheless, labor mobility between firms remains low.

Traditionally, Japanese workers have been classified as either "regular" or "non-regular" employees. Companies recruit "regular" employees directly from schools or universities and provide an employment contract with no fixed duration. In contrast, "non-regular" employees (such as temporary or contract workers) are hired for a fixed period. Companies have increasingly used part-time workers, temporary contract workers, and so-called "dispatch workers" (contracted through temp agencies) to fill short-term labor requirements and to save on labor costs. In recent years, re-hiring of employees on non-regular status after retirement is also on the rise. Japanese government policy makers are deeply concerned that the number of younger workers in "non-regular" status remains stubbornly high and that the ability of such workers to find permanent employment will decline as they get older.

Although labor unions play a role in the annual determination of wage scales throughout the economy, that role has been declining. The FY2013 Ministry of Health, Labor and Welfare (MHLW) "White Paper on Labor Economy" estimated that union membership as of June 30, 2012 had fallen by 68,000 from the previous year to 9.89 million people representing approximately 18% of the labor force, well down from the peak of 12.70 million in 1994. To address the impending labor shortage resulting from population decline and a rapidly aging society, Japan's government has pursued measures to increase participation and retention of

older workers in the labor force. A new law that went into force in April 2013 requires companies to introduce employment systems allowing employees reaching retirement age (generally set at 60) to continue working until 65, if they desire.

In June 2013, Prime Minister Abe named women's increased economic participation as a priority element of his government's economic growth strategy. Policy goals include reducing the number of women who quit their jobs due to pregnancy, childbirth or child-rearing; reducing childcare center waitlists through increased capacity; increasing the number of women in management positions; and increasing the number of female national civil servants. The government has appealed to major business organizations to extend the statutory one-year childcare leave to three years and to include at least one woman on each company's board. In December 2013, the Diet passed a law extending the maximum contract period for fixed-term workers such as researchers, technical workers, and teachers in universities and research institutions from a maximum term of five years to ten years. The extended contract term will provide for greater continuity on long-term research projects. Similarly, a pending bill will provide an exemption to the five-year limit for "highly skilled specialist" contract workers to extend their contracts up to 10 years. The Government is examining additional changes to labor and immigration law that could facilitate the entry of larger numbers of skilled foreign workers in selected sectors for fixed periods.

17. Foreign Trade Zones / Free Ports

Japan no longer has free-trade zones or free ports. Customs authorities allow the bonding of warehousing and processing facilities adjacent to ports on a case-by-case basis.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic data, U.S. FDI in host country/economy

	Japan Statistical source*		USG or international statistical source		USG or international Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Japanese Gross Domestic Product (GDP) (<i>Millions U.S. Dollars</i>)	2012	6,013,926	2012	5,959,718	http://www.worldbank.org/en/country
Foreign Direct Investment	Japanese Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other

U.S. FDI in Japan (Millions U.S. Dollars, stock positions)	2012	61,756	2012	133,967	(BEA) click selections to reach. <ul style="list-style-type: none"> • Bureau of Economic Analysis • Balance of Payments and Direct Investment Position Data • U.S. Direct Investment Position Abroad on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)
Japan's FDI in the United States (Millions U.S. Dollars, stock positions)	2012	286,529	2012	308,253	(BEA) click selections to reach <ul style="list-style-type: none"> • Balance of Payments and Direct Investment Position Data • Foreign Direct Investment Position in the United States on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)
Total inbound stock of FDI as % Japanese GDP (calculate)	2012	3.4	2012	3.4	

Source:

Japan's GDP: Economic and Social Research Institute (ESRI), Cabinet Office --

http://www.esri.cao.go.jp/en/sna/data/kakuhou/files/2012/tables/24fcm1n_en.xls

USD/JPY exchange rate: Bank of Japan --

<http://www.boj.or.jp/statistics/market/forex/fxdaily/index.htm/>

Japan's FDI stock: Japan External Trade Organization (JETRO) --

<http://www.jetro.go.jp/en/reports/statistics/>

Japan's FDI stock: UNCTAD --

<http://unctad.org/en/pages/DIAE/World%20Investment%20Report/Country-Fact-Sheets.aspx>

**Table 3: Sources and Destination of FDI
Japan, 2012**

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations (US Dollars, Millions)					
Inward Direct Investment			Outward Direct Investment		
Total Inward	205,752	100%	Total Outward	1,037.698	100%
United States	61,592	30%	United States	285,767	28%

Netherlands	31,524	15%	Netherlands	94,193	9%
France	17,985	9%	China, P.R.: Mainland	92,967	9%
United Kingdom	15,430	7%	Australia	61,181	6%
Singapore	15,352	7%	Cayman Islands	58,627	6%

Source: <http://cdis.imf.org>

**Table 4: Sources of Portfolio Investment
Japan, 2012**

Portfolio Investment Assets								
Top Five Partners (Millions, U.S. Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	3,525,267	100%	All Countries	687,170	100%	All Countries	2,838,097	100%
United States	1,183,093	34%	United States	297,136	43%	United States	885,957	31%
Cayman Islands	575,629	16%	Cayman Islands	95,565	6%	Cayman Islands	479,973	17%
France	215,947	6%	United Kingdom	47,916	7%	France	195,005	7%
United Kingdom	215,929	6%	Australia	23,669	3%	United Kingdom	168,013	6%
Germany	181,490	5%	Canada	21,617	3%	Germany	161,471	6%

Source: <http://cdis.imf.org/>

19. Contact Point for Inquiries

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