JAPAN

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

Japan is an island nation located in Eastern Asia. 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 slow growth, Japan’s economy in the last two years has shown signs of new vitality. The Liberal Democratic Party (LDP) Government of Prime Minister Shinzo Abe, elected by wide margins in December 2012 and again in December 2014 on a platform of economic recovery and revitalization, is pursuing an ambitious program of aggressive monetary easing, flexible fiscal policy, and a structural reform-focused “growth strategy” intended to put Japan’s economy on a path of sustainable growth.

The Government of Japan's growth strategy includes numerous measures intended to promote inward FDI. The Prime Minister announced in June 2013 the goal of doubling Japan’s inward FDI stock to 35 trillion yen (JPY) by 2020, and reiterated this commitment in the revised strategy issued in June 2014. The focus on FDI promotion is encouraging, although Japan has the lowest ratio of inward 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 foreign direct investment (FDI). The Ministry of Economy, Trade and Industry (METI) and the Japan External Trade Organization (JETRO) assist foreign firms wishing to invest 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. Japan has an independent judiciary, consistently applied commercial law, and strong intellectual property protections. In recent years, the government has lowered capital gains, registration, and license taxes on real estate, and has reduced gift taxes. In April 2015, the Diet passed legislation cutting the corporate tax rate. 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 a low birthrate and 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 under fixed-term labor contracts.

Foreign investors in the Japanese market can still face numerous challenges, many of which relate more to prevailing social practice rather than government regulations. These include high tax rates, including social security taxes; an insular and consensual business culture traditionally resistant to mergers and acquisitions (M&A); a lack of independent directors on many company boards (although this is changing); and cultural and linguistic barriers. However, the current government is pursuing initiatives intended to address each of these challenges, and hopes these policies will contribute to an increasingly open and investor-friendly business environment.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

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, the government of Prime Minister Shinzo Abe announced its intention to double Japan's inward FDI stock to JPY 35 trillion by 2020, and reiterated that commitment in its revised economic growth strategy in June 2014. In April 2014, the government constituted a new "FDI Promotion Council" comprised of government ministers and 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). On March 18, 2015, the Council proposed a new five-point action plan to encourage inbound FDI and help foreigners conduct business in Japan (available at http://www.invest-japan.go.jp/promotion/promise_en.pdf). The proposals include minimizing wait times for immigration procedures; introducing free Wi-Fi for foreign visitors; and providing multi-language displays in stores, roads, railways and hospitals by March 2020, prior to the Summer Olympic/Paralympic Games in Tokyo.

While authorities hope these initiatives will attract more FDI in the future, Japan's implementation of 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 3.5 percent at the end of 2013, compared with 32.1 percent on average for all Organization for Economic Cooperation and Development (OECD) member countries. While the FDI stock has risen substantially since the 1990s, 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 Japan External Trade Organization (JETRO) are the lead agencies responsible for assisting foreign firms wishing to invest in Japan. METI and JETRO have together created a "one-stop shop" for foreign investors, providing a single location—with language assistance—where those seeking to establish a company in Japan can process necessary paperwork. (Details are available at http://www.jetro.go.jp/en/invest/ibsc/). Prefectural and city governments also have active programs to attract foreign investors, but they lack many of the financial tools U.S. states and municipalities 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, an aging population, and a shrinking workforce. The government seeks to restore Japan to a path of sustainable growth through its "Three Arrows" economic program combining aggressive monetary easing, flexible fiscal policy, and regulatory and structural reform, collectively dubbed "Abenomics." Fiscal and monetary policies are credited with reigniting economic growth in 2013 and early 2014 and helping Japan make progress in exiting deflation.

However, the reform component of "Abenomics," considered essential for long-term growth and competitiveness, will take longer to implement and remains a work in progress. Additional impetus for reform should 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 twelfth member in July 2013.

Over time, Japan must also transition toward fiscal sustainability. According to the International Monetary Fund's World Economic Outlook, as of October 2014 Japan's gross public debt was estimated at about 245 percent of GDP – the highest percentage among advanced economies. The national Diet voted in 2012 to raise the consumption tax from 5 percent to 10 percent in two stages by 2015 to help reduce the fiscal imbalance; the first stage, from 5 percent to 8 percent, was implemented on April 1, 2014. The resulting drop in domestic consumption, however, compelled PM Abe in late 2014 to postpone by 18 months—from October 2015 to April 2017—the second stage of the tax hike (from 8 percent to 10 percent). The Diet in March 2015 ratified this postponement by amending the 2012 law, but removed the clause that would allow for any additional postponements beyond 2017.

In addition to business considerations relevant to investing in a mature economy, foreign investors seeking a presence in the Japanese market or to acquire a Japanese firm through corporate takeover may face additional challenges, many of which relate more to prevailing business practices 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 traditional lack of independent directors on many company boards (even though this is changing); 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 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

The World Trade Organization (WTO) conducted its most recent review of Japan's trade policies in March 2015 (available at https://www.wto.org/english/tratop_e/tpr_e/tp410_e.htm).

The OECD released its biennial Japan economic survey results on April 15, 2015 (http://www.oecd.org/japan/economic-survey-japan.htm).

UNCTAD has not conducted any recent investment policy reviews of Japan.

Laws/Regulations of Foreign Direct Investment

Major laws affecting foreign direct investment (FDI) into 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 FDI 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 (last amended in 2008), which established a flexible regulatory system for financial markets and applied a uniform set of rules for similar financial instruments. After peaking at 309 in 2007, numbers of annual inbound M&A transactions declined to 112 in 2012, but rebounded somewhat to 149 in 2013.

Industrial Promotion

In March 2014, the Special Zones Advisory Council chaired by the current Prime Minister designated six National Strategic Special Zones (NSSZ) to implement selected deregulation measures intended to attract new investment and boost regional growth. The zones comprise Niigata City; Tokyo Metropolitan Area; Kansai region (Osaka, Hyogo, and Kyoto); Yabu City (in Hyogo Prefecture); Okinawa and Fukuoka City. Further details on the initiative are available at http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/honbunEN.pdf).

In an effort to promote tourism-related investment, the Abe Government in 2014 introduced legislation in the Diet that would provide the legal framework for allowing privately-operated casinos as part of integrated resorts. The bill was not acted on prior to parliamentary elections in December 2014, and has not yet been reintroduced as of early 2015. While the government has said that its goal is to have the first integrated resorts completed and operating by the time Tokyo hosts the Summer Olympic Games in 2020, opposition to the bill among some elements of the ruling coalition, and absence of strong public support, make prospects for passage of the legislation unclear.

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, but 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 2014, the BOJ had JPY 180 billion of REIT shares on its books—a very small portion of BOJ's total assets of JPY 224 trillion, but up substantially from just JPY 2.2 billion in 2010. However, the real estate market remains characterized by limited numbers of large real estate deals between unrelated parties. Additionally, U.S. investors in the past 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 restriction limits foreign ownership in Japan's former land-line monopoly telephone operator, Nippon Telegraph and Telephone (NTT), to 33 percent. Japan's Radio Law and separate Broadcasting Law also limit foreign investment in broadcasters to 20 percent, or 33 percent 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 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.

Privatization Program

Japan has privatized many 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 was enacted in June 2013 to allow the sale of airport 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. Under the program, airport operators must initiate the privatization request, which 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. As of early 2015, Kansai, Takamatsu, Sendai and Fukuoka airports have initiated requests for privatization, with Kansai Airport slated to be privatized by January 2016.

On October 1, 2014, MOF announced the selection of 11 securities firms to prepare the Initial Public Offering (IPO) of Japan Post Holdings (JPH), parent company of the Japan Post Group, and its two financial subsidiaries—Japan Post Bank (JPB) and Japan Post Insurance (JPI). On December 26, 2014, JPH announced that the holding company and the two subsidiaries would go public at the same time in the latter half of FY2015, and that the lead manager securities firms for the IPO of the two financial subsidiaries will be the same as those selected for the IPO of JPH. On March 31, 2015, Japan Post group submitted its preliminary application for listing on to the Tokyo Stock Exchange (TSE), with plans to make a formal application by mid-year.

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 percent of the shares of a listed company in certain designated sectors, it must provide prior notification and obtain approval from 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 investments in strategic industries deemed important to Japan's national interests.

Competition Law

Several sections of Japan's 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. Amendments to the AMA enacted in December 2013 include the abolition of the Japan Fair Trade Commission (JFTC) hearing (Shinpan) system and transferred the authority to hear appeals of JFTC rulings to the Tokyo Municipal Court. The revised bill took effect April 1, 2015.

Investment Trends

Japan's FDI statistics for 2013 show a net outflow of about JPY 135 billion for the year. The number of outbound merger and acquisition (M&A) cases by Japanese companies abroad rose to a record 557 in 2014, exceeding the previous record of 515 in 2012. Meanwhile, inbound M&A transactions increased for the third consecutive year to 1,558, the largest number since 2009. Japan's outward FDI as a percentage of GDP was 2.8 percent in 2013 (Source: OECD International Direct Investment Database, IMF).

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	15 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	29 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	21 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 39,947	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 three years, and has joined statements of the G-7 and G-20 affirming that countries would not target exchange rates for competitive purposes.

Remittance Policies

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 November 2014, the Japanese Diet passed three bills addressing three of the four major deficiencies noted in the 2008 Financial Action Task Force (FATF) evaluation of Japan's anti-money-laundering and terrorist finance regime. These new laws criminalize terrorist financing, strengthen customer due diligence standards for financial and non-financial sectors, and provide legal support for freezing terrorists' assets. Of the deficiencies noted by FATF, only one now remains: ratification and implementation on the UN Convention against Transnational Crime (UNTOC or the Palermo Convention).

Japan is implementing 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. Customers wishing to make cash transfers exceeding JPY 100,000 must do so through bank clerks, not ATMs, and must present photo identification.

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.

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. Since then, the government has injected over USD 12.5 billion through the Nuclear Damage Liability Facilitation Fund to procure a 50.1 percent stake in the company. Total government support for TEPCO and its compensation payments to victims and evacuees of the nuclear accident has exceeded USD 37 billion. 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. With recent ratification by Japan, the Convention on Supplementary Compensation for Nuclear Damage (CSC) entered into force on April 15, 2015. The CSC is a global nuclear liability regime that channels all liability for a nuclear accident to plant operators, thereby allowing quick compensation to victims and protection for nuclear suppliers from recourse, freeing them to conduct business internationally.

Outside of the utilities and financial sectors, the government nationalized Japan Airlines in 2010 as part of a two-year corporate reorganization plan. The airline has since been re-privatized.

4. Dispute Settlement

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

Japan is primarily a civil law country based on codified law. The Constitution and the five major codes; Civil, Civil Procedure, Commercial, Criminal and Criminal Procedure are the legislative base of the system. 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. Out-of-court settlements in Japan tend to save time and expense, but can sometimes lack transparency and fairness. In practice, because 100 percent 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 is a member state to the International Centre for the Settlement of Investment Disputes (ICSID Convention) since 1967 and is also a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Duration of Dispute Resolution

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

WTO/TRIMS

Japan is a World Trade Organization (WTO) member and party to The Agreement on Trade-Related Investment Measures TRIMS.

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. 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 JPY 26.3 trillion to date for Tohoku region reconstruction; the appropriations cover the five years from FY2011 to FY2015 (designated as the “concentrated reconstruction period”). Local governments in the Tohoku region play a central role in formulating reconstruction plans and implementing nationally-approved measures. As of March 2015, 147 reconstruction promotion plans that feature special zones have been approved; the complete list is available on the Reconstruction Agency website.

The Reconstruction Agency reports that public infrastructure reconstruction has largely progressed according to schedule, but shortages of skilled labor and construction materials have hindered progress in housing relocation and rebuilding. As a result, many municipalities have been unable to begin housing projects and cumulatively about JPY 5 trillion of their allocated reconstruction budgets have gone unused. The GOJ is working with local governments to address these challenges. In March 2015, Prime Minister Abe endorsed plans to draw up a new five-year framework to succeed the "concentrated reconstruction period" for Tohoku by summer 2015. Japan's joining the Convention on Supplementary Compensation for Nuclear Damage in January 2015 promises to facilitate greater international private sector involvement in ongoing clean-up and decommissioning work at and near the site of the damaged Fukushima Daiichi nuclear power plant.

Research and Development

Japan is a global leader in the robotics industry. In order to remain at the forefront in robotics technology, the current government has established the Robot Revolution Realization Council in January 2015. The Council's goals are to maintain Japan's position as the world's robot innovation hub, promote higher levels of robot utilization globally, and participate in setting international rules and standards in the robotics industry. The Council is expected to pursue a strategy focused on regulatory reform in multiple areas to encourage innovation and growth, including telecommunications (radio waves), aviation (drones), and health (nursing care).

Performance Requirements

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

Data Storage

Japan has no general restrictions on data storage. However, separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment with regard to the storage and general treatment of personally identifiable information in Japan. The Abe Government plans to submit a bill to the Diet in 2015 to amend the Privacy Act. The amendment would seek to enhance the use of personal data for business purposes while protecting privacy. The current version of the bill envisions a third party authority similar to the EU's Privacy Commissioner, although the extent of the authority's power is still under deliberation.

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 must be recorded to be enforceable. Japan has a reliable recording system. Property can be rented or leased but no sub-lease is legal without the owner's consent. On the World Bank's 2015Doing Business Report, ranks Japan 66 out of 189 economies in the category of Ease of Registering Property. This is a result of the 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 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. 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.

Patents: 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. 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.

Trademarks: 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. The law has since been amended to 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. It also 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.

Counterfeit goods: Japan's Customs and Tariff Bureau, within the Ministry of Finance, reported 32,060 instances of intellectual property infringement that led to the confiscation of pirated goods during 2014, marking a 14 percent increase from 2013. The most seized items were handbags and wallets (11,988), clothing – including fake Japanese national soccer team uniforms – (7,434) and smartphone cases and cellphone accessories (3,331). Customs also reported that 92.2 percent of these goods originated from China. The Japan Patent Office releases an annual survey regarding counterfeiting. Its most recent 2014 survey of over 4,000 Japanese companies found that 22 percent reported having suffered losses due to counterfeiting and 60 percent of the counterfeiting involved the Internet.

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

Contact at U.S. Embassy Tokyo:
Robin Cromer, Economic Section (until July 31, 2015)
+81-3-3224-5859
CromerRS@state.gov

Jonathan Alan, Economic Section (from August 1, 2015)
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AlanJA@state.gov
Country/Economy Resources:

The American Chamber of Commerce in Japan (ACCJ):
Tokyo Office
Masonic 39 MT Bldg. 10F
2-4-5 Azabudai, Minato-ku
Tokyo 106-0041
http://www.accj.or.jp/

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 and raises the cost of doing business. 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.

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 Cabinet Office has established a "hot line" through which businesses and private citizens can submit regulatory reform proposals to the government.

The United States has encouraged the Japanese Government to promote deregulation, improve competition policy, and undertake administrative reforms that could contribute to more foreign direct investment into Japan. This includes improving public notice and comment procedures, applying consistency and transparency in rule-making, and giving due consideration to comments received. 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.

Japan is a member of the U.N. Conference on Trade and Development's international network of transparent investment procedures: www.eregulations.org. Foreign and national investors may be able to find information on administrative procedures applicable to investment and income generating operations including the number of steps, name and contact details of the entities and persons in charge of procedures, required documents and conditions, costs, processing time, and legal bases justifying the procedures at:
www.jetro.go.jp/en/invest/setting_up/modelcase/guide.html#Settingupacompanyorlocalbranch

9. Efficient Capital Markets and Portfolio Investment

Japan maintains no formal restrictions on inward portfolio investment, and foreign capital plays an important role in Japan's financial markets. Historically, many company managers and directors have resisted 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, although there are signs of change. 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—merged 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, 3,406 companies were listed in TSE at the end of 2014, compared to 2,293 in December 2013.

In January 2014, the TSE and Nikkei launched the JPX Nikkei 400 Index. The index puts a premium on company performance, particularly return on equity. Companies included should have returns on equity exceeding 11 percent in the past two years, and also should have two or more external board members. Inclusion in the index has become an unofficial "seal of approval" in corporate Japan, and many companies have taken steps, including undertaking share buybacks, to improve their ROE. The Bank of Japan has indicated it will purchase JPX-Nikkei 400 ETFs as part of its monetary operations, and Japan's massive Government Pension Investment Fund (GPIF), also has indicated it will invest in JPX-Nikkei 400 ETFs, putting an additional premium on membership in the index.

Money and Banking System, Hostile Takeovers

Japan's aversion to M&A is receding gradually. 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, and many cash-rich Japanese companies are also looking to carry out acquisitions abroad.

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.

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.

10. Competition from State-Owned Enterprises

Japan has privatized most former state-owned enterprises (SOEs). As mentioned in Section 1.6, under Privatization Program, the government in 2015 aims to conduct an IPO for Japan Post Holdings Co. and its financial subsidiaries, Japan Post Insurance and Japan Post Bank, Japan's largest insurance company and bank respectively. The IPO marks the final stage of Japan Post privatization begun under former PM Junichiro Koizumi almost a decade ago, and responds to long-standing criticism from commercial banks and insurers—both foreign and Japanese—that their government-owned Japan Post rivals have an unfair advantage.

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.

OECD Guidelines on Corporate Governance of SOEs

The government has made improved corporate governance an objective in its economic growth strategy, and good governance principles—including the appointment of independent outside directors to company boards—are on the rise in Japan. According to a survey conducted by the Japan Board Members' Association in August 2014, the percentage of companies listed in the first tier of the Tokyo Stock Exchange (TSE) with at least one outside director was 74.4 percent (1,352 companies out of 1,816), up from 62.2 percent in 2013, and 34.7 percent of companies had at least two outside directors.

In June 2014, the Diet passed the revised Companies Act that encourages 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 (comply or explain provision). The amendments also created an alternative structure where companies may institute an audit and supervisory committee whose members do not serve as directors. The revised Companies Act will become effective May 1, 2015. Accordingly, the "comply or explain" rule will be applied to the annual general shareholders' meetings, which are traditionally convened in June.

Responding to concerns that these Companies Act revisions—although welcome—did not go far enough in promoting governance changes, the Financial Services Agency (FSA) and Tokyo Stock Exchange (TSE) worked with academics and private sector experts in late 2014 to draft Japan's first corporate governance "Code of Conduct." Modeled on OECD and UK corporate governance principles, the Code aims to increase corporate transparency and management accountability through five broad areas, including the appointment of outside directors to company boards and a requirement that companies provide a public explanation for cross-holding shares.

The Abe Government hopes the Code will help reinvigorate Japan's corporate sector by encouraging a stronger focus by corporate management on earnings and shareholder value. Together with the "Stewardship Code" for institutional investors launched by the FSA in April 2014, the Code encourages companies to put their massive cash stockpiles to better use by increasing investment, raising dividends, and taking on more smart risk that can boost Japan's overall growth. The Code was finalized in March 2015 and will go into effect in June. An English translation of the Code is available at:
http://www.fsa.go.jp/en/refer/councils/corporategovernance/20150306-1/01.pdf

Sovereign Wealth Funds

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 foreign and local enterprises generally follow accepted CSR principles. Business organizations also actively promote CSR.

OECD Guidelines for Multinational Enterprises

Japan is an adherent to the OECD Guidelines. The Japanese National Contact Point (NCP) is an interagency body which is coordinated by the Ministry of Foreign Affairs and includes the Ministry of Health, Labor and Welfare, and the Ministry of Economy, Trade and Industry.

It has an advisory body, the NCP Committee, which consists of the Japanese Business Federation (Keidanren), the Japanese Trade Union Confederation (Rengo), and the Japanese NCP.

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, and an individual convicted under these statutes is, depending on the nature of the crime, subject to prison sentences and possible fines. 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.

Japan’s Act on Elimination and Prevention of Involvement in Bid-Rigging authorizes the Japan Fair Trade Commission (JFTC) to demand that 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. 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.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Japan has ratified the OECD Anti-Bribery Convention, which bans bribing foreign government 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.

Resources to Report Corruption

Businesses or individuals may contact the Japan Fair Trade Commission (JFTC), with contact details at: http://www.jftc.go.jp/en/about_jftc/contact_us.html.

14. Bilateral Investment Agreements

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.

As of March 2015, Japan has concluded bilateral investment treaties (BITs) with 25 countries: Bangladesh, Cambodia, China, Colombia, Egypt, Hong Kong SAR, Iraq, Kazakhstan, South Korea, Kuwait, Laos, Mongolia, Mozambique Pakistan, Papua New Guinea, Peru, Russia, Saudi Arabia, Sri Lanka, Turkey, Ukraine, Uruguay, Uzbekistan and Vietnam. Japan is currently negotiating bilateral BITs with Qatar, Tanzania, Kenya, Ghana, Morocco, United Arab Emirates, and Myanmar.

Bilateral Taxation Treaties

The United States and Japan have a double taxation 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.

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

Overseas Private Investment Corporation (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

In the postwar era, employment practices in Japan’s large companies centered on the principles of lifetime employment, seniority-based wages, and broad membership in unions. However, the demographic reality of an aging population 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. Still, 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 non-regular workers 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 along with union membership. Labor union members today make up only 18 percent of the labor force, down from 25 percent in the 1990s. 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 and women 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, the government named women's increased economic participation as a policy priority. 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. A bill submitted to the Diet on February 20, 2015 and now under consideration, would require larger companies to disclose statistics about the hiring and promotion of women, and adopt action plans to improve the numbers.

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. It has also taken steps to expand the foreign Technical Intern and Trainee Program (TITP). Originally intended as a skills-transfer program for workers from developing countries, TITP is being used to address immediate labor shortages in specific sectors such as construction. In April 2014 the Government announced an expansion of TITP in the construction sector through FY2020. The expansion includes extending the period of stay for construction workers under TITP from three years to five, and permitting re-entry of former interns and trainees for another two to three years.

In March 2015, two additional bills related to foreign workers were submitted to the Diet. The first would extend the period of stay under TITP to five years for more categories of workers, and strengthen supervision of the program to deter human rights abuses. The second bill would create a new residency status of nursing care (kaigo) for foreign students who study at certain Japanese nursing-care training schools and pass the national caregivers' examination.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

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

	Host Country Statistical source*		**USG or international statistical source**		**USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other**
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	478,368	2013	4,919,563	worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	2013	52,402	2013	123,174	bea.gov/international/factsheet/factsheet.cfm?Area=614
Host country's FDI in the United States ($M USD, stock positions)	2013	331,439	2013	342,327	bea.gov/international/factsheet/factsheet.cfm?Area=614
Total inbound stock of FDI as % host GDP	2013	3.5%	2013	3.5%	OECD FDI in figures (2014)

Sources: (1) Japan's GDP: Economic and Social Research Institute (ESRI), Cabinet Office – esri.cao.go.jp/en/sna/data/kakuhou/files/2012/tables/24fcm1n_en.xls
(2) USD/JPY exchange rate: Bank of Japan – boj.or.jp/statistics/market/forex/fxdaily/index.htm/
(3) Japan's FDI stock: Japan External Trade Organization (JETRO) – jetro.go.jp/en/reports/statistics/
(4) Japan's FDI stock: UNCTAD – unctad.org/en/pages/DIAE/World%20Investment%20Report/Country-Fact-Sheets.aspx

Table 3: Sources and Destination of FDI

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	170,597	100%	Total Outward	1,117,267	100%
United States	52,402	30%	United States	331,439	29%
Netherlands	27,664	16%	China, P.R.: Mainland	98,132	8%
France	14,249	8%	Netherlands	96,451	8%
Singapore	13,360	7%	United Kingdom	67,742	6%
United Kingdom	13,115	7%	Australia	54,112	5%
"0" reflects amounts rounded to +/- USD 500,000.					

Source: JETRO (converted from JPY to USD)

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US 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: JETRO (converted from JPY to USD)

19. Contact for More Information

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