GAR INVESTMENT TREATY ARBITRATION

Japan

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AUGUST 2022

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Overview of investment treaty programme

1 What are the key features of the investment treaties to which this country is a party?

(a) BITs/MITs

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts[3]	Arbitration
Arab Republic of Egypt BIT (14 January 1978)	No	Yes	Yes	Yes	No	No	No	Yes
Argentina BIT (not in force)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Armenia BIT (15 May 2019)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Bahrain BIT (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Bangladesh BIT (25 August 1999)	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Cambodia BIT (31 July 2008)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
China BIT (14 May 1989)	No	Yes	Yes	Yes	No	6 months	No	Yes
Colombia BIT (11 September 2015)	Yes	Yes	Yes	Yes	Yes	7 months and 15 days	No	Yes
ECT (16 April 1998)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Georgia BIT (23 July 2021)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Hong Kong, China SAR BIT (18 June 1997)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Iran BIT (26 April 2017)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Iraq BIT (25 February 2014)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Islamic Republic of Pakistan BIT (29 May 2002)	No	Yes	Yes	Yes	No	Yes	Yes	Yes
Israel BIT (5 October 2017)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Ivory Coast BIT (26 March 2021)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Jordan BIT (1 August 2020)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Kazakhstan BIT (25 October 2015)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Kenya BIT (14 September 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Korea, China MIT (17 May 2014)	Yes	Yes	Yes	Yes	Yes	4 months	Yes	Yes
Kuwait BIT (24 January 2014)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Laos People's Democratic Republic BIT (3 August 2008)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Morocco BIT (23 April 2022)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Mozambique BIT (29 August 2014)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Myanmar BIT (7 August 2014)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes

BIT contracting party or MIT	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[2]	Local courts[3]	Arbitration
Oman BIT (21 July 2017)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Papua New Guinea BIT (17 January 2014)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Peru BIT (10 December 2009)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Republic of Korea BIT (1 January 2003)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Russian Federation BIT (27 May 2000)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Saudi Arabia BIT (7 April 2017)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Sri Lanka BIT (4 August 1982)	No	Yes	Yes	Yes	No	No	No	Yes
Turkey BIT (12 March 1993)	No	Yes	Yes	Yes	No	Yes	Yes	Yes
UAE BIT (26 August 2020)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Ukraine BIT (26 November 2015)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Uruguay BIT (14 April 2017)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Uzbekistan BIT (24 September 2009)	Yes	Yes	Yes	Yes	Yes	3 months	Yes	Yes
Vietnam BIT (19 December 2004)	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes

FTAs	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[4]	Local courts[5]	Arbitration
ASEAN EPA (1 December 2008)[6]	Yes	Yes	Yes	Yes[7]	No	180 days	Yes	Yes[8]
Australia EPA (15 January 2015)[9]	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A
Brunei EPA (31 July 2008)	Yes	Yes	Yes	Yes	No	5 months	Yes	Yes
Chile EPA (3 September 2007)	Yes	Yes	Yes	Yes	No	6 months[10]	No	Yes
CPTPP (30 December 2018)[11]	Yes	Yes	Yes	Yes	No	6 months	No	Yes
India EPA (1 August 2011)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Indonesia EPA (1 July 2008)	Yes	Yes	Yes	Yes	No	5 months	Yes	Yes
Malaysia EPA (13 July 2006)	Yes	Yes	Yes	Yes	No	5 months	Yes	Yes
Mexico EPA (1 April 2005)	Yes	Yes	Yes	Yes	No	180 days	No	Yes
Mongolia EPA (7 June 2016)	Yes	Yes	Yes	Yes	Yes	120 days	Yes	Yes
Peru EPA (1 March 2012)[12]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Philippines EPA (11 December 2008)[13]	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A
RCEP (1 January 2022)[14]	Yes	Yes	Yes	Yes	No	N/A	N/A	N/A
Singapore EPA (30 November 2002)	Yes	Yes	Yes	Yes[15]	No	5 months	Yes	Yes
Switzerland EPA (1 September 2009)	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes

FTAs	Substantive protections					Procedural rights		
	Fair and equitable treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period[4]	Local courts[5]	Arbitration
Thailand EPA (1 November 2007)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Vietnam EPA (1 October 2009)[16]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Qualifying criteria - any unique or distinguishing features?

2 What are the distinguishing features of the definition of "investor" in this country's investment treaties?

Issue	Distinguishing features in relation to the definition of 'investor'
Scope of definition	The definition of 'investor' in Japan's international investment agreements (IIAs) generally covers 'nationals' and 'citizens' of a contracting party. Under the BITs with Hong Kong,[17] Israel, and the EPAs with Brunei, Malaysia, Singapore and Switzerland, 'investor' includes also a 'permanent resident' of those countries, however, not a permanent resident of Japan. Under the ASEAN EPA and the RCEP, 'investor' includes a permanent resident of a contracting party, where both that party and the host state 'recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment.' The CPTPP is the only example where a permanent resident of Japan as well as that of another contracting party is protected as an investor.
Dual nationals	Under the BITs with Colombia and Uruguay, 'natural persons who are nationals of both Contracting Parties' are not protected 'unless such nationals have at the time of, and ever since the investment been domiciled outside' the territory of the host state. The Morocco BIT provides that 'a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.' The Israel BIT and the Philippines EPA expressly define an 'investor of a Party' as a national of either contracting party.
Seat or place of business	For a legal entity to qualify as an 'investor', most of Japan's IIAs provide that companies and 'enterprises' must be duly constituted under the applicable laws and regulations of a contracting party. Only a few of Japan's BITs take a different approach and require that a company be seated within the territory of the contracting party.[18] The Iran BIT requires that an investor's headquarters or real economic activities be located in the home state. Under the BITs with Colombia, Israel and Morocco, and the EPAs with India and Switzerland, a company must carry out 'substantial business activities' within the territory of the respective contracting party. Similarly, the Singapore EPA excludes 'an enterprise owned or controlled by persons of non-Parties and not engaging in substantive business operations in the territory of the other Party' from the scope of 'investor.'
Denial and extension of benefits	Many of Japan's IIAs provide for a 'denial of benefits' clause pursuant to which a contracting party can deny treaty protection to an investor of the other contracting party that is 'owned or controlled by an investor of a non-Contracting Party' if the 'denying Contracting Party ... does not maintain diplomatic relations with the non-Contracting Party' or 'adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise'.[19] Except for the Colombia BIT, these IIAs also allow the host state to deny the benefit of the treaties to an enterprise of the other contracting party that is 'owned or controlled by an investor of a non-Contracting Party' (or the host state) and 'the enterprise has no substantial business activities' within the territory of the other contracting party. It should be noted that denial of benefits clauses had generally been 'subject to prior notification and consultation'. This requirement has been eliminated from many of the recent IIAs (with the exception of the BITs with Kenya, Morocco and Oman) to ensure that the denial of benefits clause can be invoked in an investor-state arbitration. By contrast, a few of Japan's BITs contain a provision expanding treaty protection to 'a [non-Contracting] company in which investors of either Contracting Party have a substantial interest', unless the non-contracting party and the other contracting party have concluded an IIA.[20] 'Substantial interest' means 'exercise of control or decisive influence' by the investor of either contracting party on the company of the non-contracting party.

Issue	Distinguishing features in relation to the definition of 'investor'
Concrete steps for making an investment	Many of Japan's IIAs define an 'investor' as a natural person or enterprise that 'seeks to make, is making, or has made investments'[21] in the territory of the other contracting party. The BITs with Colombia, Myanmar, Peru and Uruguay, and the CPTPP and the RCEP expressly establish that this is only the case where 'the investor has taken concrete steps necessary to make investments'. Such 'concrete' steps include an application by the investor for a permit or licence, or the obtaining of financing for making such investments.

3 What are the distinguishing features of the definition of "investment" in this country's investment treaties?

Issue	Distinguishing features in relation to the concept of 'investment'
Assets qualifying as 'investments'	Most of Japan's IIAs contain a broad definition of the term 'investment', which is defined as 'every kind of asset owned or controlled' by an investor. In most cases, the IIAs further include a non-exhaustive list of assets that qualify as 'investment', in particular, enterprises, shares, bonds, derivatives, rights under contracts, claims to money, intellectual property rights, rights conferred pursuant to laws and regulations such as concessions and any other movable and immovable property. By contrast, a few of Japan's IIAs, such as the EPAs with Mexico and Thailand, define 'investment' by providing an exhaustive list of assets. A number of the more recent IIAs[22] expressly state that only assets with 'characteristics of an investment' are eligible 'investments', for instance, 'the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk'. The Argentina BIT, the Malaysia EPA and the CPTPP stipulate further factors for determining whether an asset has 'characteristics of an investment' with regard to 'rights conferred pursuant to laws and regulations, or contracts such as concessions, licences, authorisations and permits', such as 'the nature and extent of the rights that the holder has under the domestic law of the country'. The BITs with Argentina and Uruguay, the CPTPP, and the RCEP illustrate the kind of debt likely to have characteristics of an investment. Many of Japan's IIAs clarify that a 'change in the form in which assets are invested does not affect their character as an investment'.
Assets excluded from scope of 'investments'	Assets most frequently excluded from the scope of 'investments' in Japan's IIAs include: • 'orders or judgments entered in a judicial or administrative action';[23] • an 'equity participation in a state enterprise'; [24] • 'claims to money' that: (i) 'are immediately due and result solely from export and import contracts for the sale of goods or services' (other than contracts-based orders habitually secured); or (ii) 'result from credit granted in relation to the contracts referred to in (i)' with a maturity date of less than 12 months; and[25] • debts of a contracting party or a state enterprise.[26] The BITs with Israel, Jordan, Morocco and Peru, the EPAs with ASEAN and Mexico, and the RCEP also exclude 'claims to money arising solely from commercial contracts for the sale of goods or services', and 'credits granted in relation/connection with a commercial transaction'. The Uruguay BIT excludes 'claims to payment that are immediately due and result from the sale of goods or services are not investments'. The UAE BIT specifically excludes natural resources from its ambit of protection. The RCEP clarifies that market share, market access, expected gains and opportunities for profit-making are not, by themselves, investments.
Investments made in accordance with host states' laws	The BITs with Georgia, Iran, Israel, Jordan, Morocco and Ukraine, and the Indonesia EPA expressly provide that only investments made in accordance with the laws and regulations of the host state shall be protected.
Ownership/control/indirect control	Some IIAs, for example, the BITs with Bahrain, Cambodia, Colombia, Georgia, Iraq, Ivory Coast, Kenya and Morocco, the Mongolia EPA, and the RCEP (only for Thailand) define that an enterprise is 'owned' if an investor owns more than 50 per cent of the equity interest in it, and is 'controlled' if the investor has the power to name a majority of its directors or otherwise to legally direct its actions. The definition of 'investment' under most of Japan's IIAs[27] explicitly covers assets under the indirect control of an investor.
Temporary scope of protection	Some of Japan's IIAs provide that they apply to investments made prior to their entry into force.[28] This is to be distinguished from IIAs that expressly exclude claims arising out of events that occurred prior to their entry into force. These are, for example, the BITs with Argentina, Armenia, Bahrain, Cambodia, Colombia, Georgia, Iran, Israel, Ivory Coast, Laos, Jordan, Kazakhstan, Kenya, Kuwait, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, UAE, Ukraine, Uruguay, Uzbekistan and Vietnam, China–Korea MIT, and the EPAs with Mongolia and ASEAN. Similarly, the CPTPP and the RCEP provide that the investment chapter 'shall not bind [a Contracting Party] in relation to an act or fact that took place or a situation that ceased to exist before [its] entry into force'.

Issue	Distinguishing features in relation to the concept of 'investment'
Sunset clause	All of Japan's BITs as well as the China–Korea MIT and the ECT provide for a 'sunset clause' that extends treaty protection to investments made prior to the termination of the respective treaty for a specific period post-termination. The Kuwait BIT and the ECT provide for the longest protection period of 20 years. Various other BITs remain applicable for up to 15[29] or 10[30] years. Among Japan's EPAs, only the ones with India and Mongolia contain a sunset clause with a 10 year post-termination protection.
Admission / approval of investment	A 'covered investment' under the ASEAN EPA must have been 'admitted' in accordance with host state's 'laws, regulations and national policies', where applicable. Some of Japan's IIAs contain a slightly different version of the provision and provide that each Contracting Party shall, subject to its laws and regulations, encourage and create favourable conditions for investors of the other Contracting Party and shall admit such investment'.[31] Similarly, the RCEP provides that: '[s]ubject to laws and regulations, each Party shall endeavour to facilitate investments among the Parties, including through (a) creating the necessary environment for all forms of investment; (b) simplifying its procedures for investment applications and approvals; (c) promoting the dissemination of investment information, including investment rules, laws, regulations, policies, and procedures; and (d) establishing or maintaining contact points, one-stop investment centres, focal points, or other entities in the respective Party to provide assistance and advisory services to investors, including the facilitation of operating licenses and permits.'

Substantive protections - any unique or distinguishing features?

4 What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Occurrence of FET standard	Almost all of Japan's IIAs establish an obligation upon the contracting party to accord FET to investments of investors of the other contracting party. Only the BITs with Bangladesh, China, Egypt, Mongolia, Pakistan, Sri Lanka and Turkey do not contain an FET standard.
FET standard and customary international law	Many of Japan's IIAs tie the level of FET to the standard under customary international law.[32]
Particular features of FET standards	The BITs with Argentina, Colombia, Morocco, Peru and Uruguay, the Mongolia EPA and the CPTPP clarify that the FET standard under customary international law 'includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process'. Similarly but with a slight difference, the RCEP provides that the FET standard 'requires' each Party not to deny justice in any legal or administrative proceedings. The BITs with Argentina, Colombia, Kenya, Peru and Uruguay, the China–Korea MIT, the EPAs with ASEAN, Australia, Chile, India, Mexico, Mongolia and Thailand, the CPTPP, and the RCEP confirm that 'a determination that there has been a breach of another provision of the IIA, or of a separate international agreement, does not establish that there has been a breach of paragraphs fair and equitable treatment.' The BITs with Colombia, Morocco and Peru further clarify that the standard covers the obligation to 'guarantee access to the [Contracting Parties'] courts'. As states have become more cautious about the concept of legitimate expectations, a few recent IIAs (eg, the Argentina BIT and the CPTPP) clarify that 'the mere fact that a Contracting Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of' the standard, 'even if there is loss or damage to the covered investment as a result.' Moreover, the CPTPP clarifies that 'the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of' the standard, 'even if there is loss or damage to the covered investment as a result'.

5 What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the 'expropriation' standard
General requirements	The expropriation clause in Japan's IIAs generally prohibits a contracting party from 'expropriating' or 'nationalising' investments or to 'take any measure equivalent to expropriation or nationalisation'[33] except (a) for a public purpose; (b) in a non-discriminatory manner; (c) upon payment of prompt, adequate and effective compensation; and (d) in accordance with due process of law.
Right to regulate for a public purpose	Some of Japan's IIAs expressly contain the host state's right to regulate for a public purpose. The Peru BIT and CPTPP align the meaning of 'public purpose' with the domestic law concepts of 'public necessity', 'public interest' or 'public use', or 'public necessity' or 'national security', respectively. Similarly, the Colombia BIT specifies that 'public purpose' may be referred to as 'public purpose' or 'social interest' under Colombian domestic law. Under the BITs with Brunei and Malaysia, which concern direct expropriations of land, the purpose must conform with the one set out in the relevant domestic law. The ASEAN EPA and the RCEP provide that expropriation relating to land shall be as defined in the existing domestic laws and regulations of the expropriating party, and the compensation shall be subject to any subsequent amendments to the laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of the land.
Indirect expropriation	The BITs with Argentina, Morocco and Peru, the China-Korea MIT, the EPAs with ASEAN, Australia, Chile, India and Mongolia, the CPTPP and the RCEP set out factors for determining 'indirect expropriation'. These treaties, with the exception of the EPAs with Chile and India, as well as the BIT with Georgia clarify that non-discriminatory measures designed or applied for legitimate public welfare objectives do not constitute indirect expropriation.
Access to local courts	Many of Japan's IIAs grant a right of access to courts to investors affected by expropriation both with regard to the merits of the investor's case and the amount of compensation payable.[34]
IP-related exclusions	The BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Israel, Ivory Coast, Jordan, Kenya, Morocco[35] and Uruguay, and EPAs with ASEAN, Australia, Chile and India, the CPTPP, and the RCEP expressly provide that the provisions concerning expropriation do not apply to the 'issuance of compulsory licences', or the 'revocation, limitation or creation of intellectual property rights', insofar as such measures are consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) in Annex 1C to the WTO Agreement.
Taxation	A number of Japan's newer generation IIAs exclude taxation measures from the scope of the expropriation standard. The India EPA and the RCEP entirely exclude taxation measures from treaty protection, while some other IIAs exclude ISDS for tax measures that the competent authorities of both contracting parties have determined as not amounting to expropriation.[36] Under the BITs with Bahrain and Cambodia, the expropriation clause applies to taxation measures. Other treaties clarify circumstances (through a note or agreed minute) in which taxation measures do not constitute expropriation.[37] The RCEP provides for the work programme, under which the parties shall, without prejudice to their respective positions, enter into discussions on the application of article 10.13 (Expropriation) to taxation measures that constitute expropriation, no later than two years after the date of entry into force of the agreement.

6 What are the distinguishing features of the national treatment/most-favoured-nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Scope of treatment	Japan's IIAs generally provide for national treatment and MFN treatment. The only exceptions are the EPAs with ASEAN (in which the MFN standard only applies to compensation for losses or damages) and Singapore (under which the contracting party merely has a duty to 'favourably consider' a possible MFN treatment), and the RCEP (under which the MFN clause shall not apply to Cambodia, Lao, Myanmar and Vietnam). Under the IIAs covering the pre-establishment phase of an investment, national and MFN treatment is usually accorded with respect to the 'establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment, and sale or other disposal of investments'.[38] Other IIAs (such as the BITs with Bahrain, Iran, Iraq and Jordan) principally cover the post-establishment phase of investment and do not accord national and MFN treatment with respect to the pre-establishment phase. Under some BITs,[39] contracting parties are, however, obliged to 'endeavour' to accord MFN treatment with respect to these pre-establishment activities and to conduct good-faith negotiations. In a similar vein, the Thailand EPA establishes an obligation for the contracting party to 'consider a request' of a possible MFN treatment for such activities. The BITs with Kenya and UAE cover both the pre- (ie, admission of investments) and post-establishment phase of an investment (ie operation, management, maintenance, use, enjoyment and sale or other disposal of investments). However, particular matters or measures concerning the admission of investments (such as the acquisition of land, subsidies, government procurement) are expressly excluded from the scope of MFN treatment. The BIT with Argentina, the CPTPP and the RCEP include provisions or footnotes to clarify that whether the treatment is accorded in 'like circumstances' under the national treatment and the MFN treatment depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.
Access to local courts	With the exception of the BITs with Iran and Morocco, the Chile EPA, the ECT, the CPTPP and the RCEP, most of Japan's IIAs contain an independent clause granting national and MFN treatment with respect to access to the courts and administrative tribunals of a contracting party. The Australia EPA accords to an investor national treatment in this respect but excludes MFN treatment in relation to access granted to non-parties under an international agreement or judicial cooperation agreements.
Limitations of national treatment	Many of Japan's IIAs[40] limit the scope of the national treatment standard and foresee certain special formalities (eg, registration requirements) regulating investments, which may, however, not interfere substantially with the treaty protections. For instance, under the Malaysia EPA, national treatment does not apply to the establishment, acquisition and expansion of portfolio investments. The Thailand EPA only limits the scope of the national treatment standard with regard to 'certain sectors'. The China BIT contains an exclusion for discriminatory measures that are 'really necessary for the reason of public order, national security or sound development of national economy.'[41] Under most investment treaties, the national treatment standard does not extend to tax matters. The EPAs with Switzerland and Australia provide otherwise. Under the former, national and MFN treatment applies to tax measures provided there is no double taxation treaty between the contracting parties. Under the Australia EPA, indirect taxes generally fall under the scope of the national and MFN treatment standards. The China–Korea MIT provides that national treatment does not apply to any non-conforming measures existing at the date of entry into force of the treaty.
Common Exceptions to MFN	Japan's IIAs typically include the following exceptions to MFN treatment: • preferential treatment by virtue of any existing or future customs union, economic or monetary union, free trade area, or similar international agreements to which the former contracting party is a party or may become a party in the future.[42] Additionally, the China–Korea MIT and the Kazakhstan BIT further exclude international agreements for 'facilitating small scale trade in border areas' or involving 'aviation, fishery, and maritime matters'; • special tax advantages accorded to investors of a non-contracting party, on the basis of reciprocity with the non-contracting party, or by virtue of any agreement relating to taxes in force between the former contracting party and the non-contracting party;[43] and • in some of the newer IIAs, the settlement of investment disputes that is provided for in other international agreements between a contracting party and a non-contracting party.[44] A limited number of Japan's IIAs contain particular limitations to MFN treatment. For example, the BITs with Bangladesh, Hong Kong, Mongolia, Pakistan, Russia and Turkey limit MFN protection to treatment no less favourable than that accorded to investors of any third party in connection with matters relating to the registration and nationality of aircraft and the acquisition of ships, and, in the case of the Turkey BIT, the acquisition of immovable property and the establishment of bank branches.

Issue	Distinguishing features of the 'national treatment' and/or 'most favoured nation' standard
Non-conforming measures	Japan's IIAs under which national and MFN treatment also apply with respect to the pre-establishment phase of an investment, generally provide that national and MFN treatment do not apply to any non-conforming measure that is maintained by the central government of a contracting party, or by a local government on the date of entry into force, with respect to certain sectors or activities specified in the attached Schedules or Annexes.[45] However, they usually oblige each contracting party, where appropriate, to reduce or eliminate the non-conforming measures that it adopts or maintains. Under some of Japan's IIAs,[46] the existing non-conforming measures to be excluded from the application of national and MFN treatment are specified in the attached Schedules (existing measures reservation); and national and MFN treatment do not apply to any non-conforming measure that a contracting party adopts or maintains with respect to sectors, sub-sectors, or activities specified in the attached Schedules (future measures reservation). Non-conforming measures also include: • subsidies or grants provided by a contracting party, including government-supported loans, guarantees, and insurance;[47] • any measures covered by the exceptions to, or derogations from, obligations under articles 3 and 4 of the Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and[48] • any measure that a contracting party adopts or maintains with respect to government procurement.[49] The ASEAN EPA provides that the contracting parties will enter into consultations on the Schedules of non-conforming measures (Work Programme) immediately after the entry into force of the First Protocol, and pending the work programme, national treatment will not apply.

7 What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

Issue	Distinguishing features of the 'protection and security' standard
Variation of wording	All of Japan's IIAs grant protection and security for investments. However, the wording differs from treaty to treaty. 'Full protection and security' is the most common language, 'most constant protection and security' appears in some treaties, and 'full and constant protection and security' is adopted in the BITs with Korea and Vietnam.
Equating to customary international law	Many of Japan's IIAs provide that each contracting party shall, in its area, accord to investments by investors of the other contracting party treatment in accordance with (customary) international law, including full protection and security.50 The CPTPP further clarifies that 'full protection and security' requires the host state to provide the level of police protection required under customary international law, which excludes 'legal protection.' The RCEP also clarifies that full protection and security requires each party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment.

8 What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

Issue	Distinguishing features of any 'umbrella clause'
Scope	About half of Japan's IIAs and a few of Japan's EPAs contain umbrella clauses.51
Qualifications of the obligation	Most of Japan's IIAs that contain an umbrella clause simply refer to 'any obligations'. However, the BITs with Colombia and Laos, the China–Korea MIT, and the EPAs with Mongolia and Switzerland require the contracting parties to observe any 'written' obligations. The Colombia BIT, and the EPAs with Mongolia and Switzerland, qualify the obligation in respect of specific investments by an investor of the other contracting party, which the investor could have relied on at the time of the establishment, acquisition or expansion of such investments. The Colombia BIT further qualifies the obligations deriving from a written agreement concluded with the central government of the host state.

9 What are the other most important substantive rights provided to qualifying investors in this country?

Issue	Other substantive protections
Armed conflict / civil unrest	All of Japan's IIAs provide for national treatment and MFN treatment regarding compensation for losses or damage suffered by armed conflict or civil unrest, although the Singapore EPA limits the treatment to such that a contracting party accords to its own investors. Notably, the Hong Kong BIT imposes an obligation that a contracting party shall accord 'restitution or reasonable compensation'; however, the protocol to the same BIT clarifies that '[n]otwithstanding the provisions of paragraph 2 of Article 6 of the Agreement, the Government of Japan shall accord to investors of Hong Kong restitution or compensation, subject to its laws and regulations'.[52] The Argentina BIT, Chile EPA, and the CPTPP exclude national treatment and MFN treatment in relation to state subsidies, grants, government loans, guarantees and insurance, and such an exclusion also applies to compensation for losses caused by armed conflict.
Prohibition of Performance requirements	Under many of Japan's IIAs, a contracting party is prohibited from imposing performance requirements for investments (in the nature of local content requirements, export requirements, export-import balancing requirements, or technology transfer requirements) on investors of the other contracting party.[53] The newer IIAs (eg, the BITs with Ivory Coast or Mozambique and the CPTPP) generally do not preclude the contracting parties from conditioning the receipt of an advantage on compliance with some of the listed performance requirements such as technology transfers, local research and development, local employment. A notable exception is the Uzbekistan BIT, which does not preclude the contracting parties from conditioning the receipt of an advantage, on compliance with any of the listed performance requirements.[54] The Bahrain BIT only precludes the contracting parties from taking any measure which is inconsistent with the obligations of the contracting parties under Article 2 of the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement. The BIT provides that the parties shall undertake a review of the agreement by, for example, adding the provisions of prohibition of performance requirements such as those with regard to transfer of technology or a licence contract with a view to further protecting and promoting investment between the contracting parties.
Free transfer of payments	All of Japan's IIAs contain provisions along the lines that all transfers relating to investments in the host state's area of an investor of the other contracting party may be freely made into and out of its area without delay. Most of these IIAs allow the contracting party to take measures according to the laws and policies of the host state, including those concerning bankruptcy, securities, and criminal or penal offences, judgments or orders in adjudicatory proceedings.[55] Beyond that, the China BIT provides for an extremely broad scope for general restrictions, not precluding the contracting parties from imposing exchange restrictions in accordance with its applicable laws and regulations. Almost all of Japan's IIAs lay down exceptional restrictions on capital transfer, save for the Hong Kong BIT, which provides no such exceptional restrictions, and the BITs with Egypt and China, which do not require any exceptional situations for limiting regulations on capital transfer. Usually,[56] in the event or threat of 'serious financial difficulties' or 'exceptional financial, economic circumstances' and in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management (ie, monetary and exchange rate policies), free transfer provisions allow the imposition of temporary restrictions (specifically exchange restrictions) with respect to cross-border capital transactions or transfers. The BITs with Sri Lanka and Turkey, and the Malaysia EPA extend this right to exceptional 'industrial circumstances'. However, it is generally required for such measures to conform with the articles of agreement of the International Monetary Fund (and often other conditions are prescribed, for example, under the BITs with Bahrain, Colombia, Georgia and Ivory Coast, and the Thailand EPA).
Non-impairment	Some of Japan's IIAs impose a general obligation upon contracting parties not to impair the operation, management, maintenance, use, enjoyment or disposal of investments through unreasonable, discriminatory or arbitrary measures.[57]
Transparency	With some exceptions,[58] a transparency obligation is set forth in most of Japan's BITs and all of Japan's EPAs. Under these IIAs, a contracting party is required to make publicly available its laws, regulations, administrative procedures, rulings of general application, and international agreements which pertain to or affect investments. The RCEP provides for the parties' obligation to promote the dissemination of investment information, including investment rules, laws, regulations, policies and procedures, in the article regarding the facilitation of investment. However, the contracting party is allowed not to do so if such documents contain confidential information, the disclosure of which would be contrary to public interest, or prejudice privacy or legitimate commercial interests.

Issue	Other substantive protections
General exceptions	Japan's IIAs generally set forth the following exceptions to substantive protections, on the condition that they are not applied in an arbitrary manner or do not constitute an unjustified discrimination: • measures adopted by a contracting party that are necessary to secure compliance with laws or regulations in relation to preventing fraud, protecting data privacy, and safety;[59] • measures adopted by a contracting party that are necessary to protect national treasures;[60] • measures adopted by a contracting party that are necessary to conserve living or non-living natural resources, if made effective in conjunction with restrictions on domestic production or consumption;[61] and • measures adopted by a contracting party that are necessary to protect human, animal, or plant life or health; or maintain public order, insofar as a genuine and sufficiently serious threat posed to one of the fundamental interests of society exists.[62] With respect to national security exceptions, Japan's IIAs usually allow: (i) measures necessary to protect 'essential security interests': (a) at a time of war or other emergency; or (b) pertaining to the implementation of policies with respect to the non-proliferation of weapons; or (ii) actions taken pursuant to obligations under the United Nations Charter for the maintenance of international peace and security.[63] The India EPA allows the taking of 'any action which [a Contracting Party] considers necessary for the protection of its essential security interests to protect critical public infrastructure, including communications, power, and water infrastructure, from deliberate attempts to disable or degrade such infrastructure'. The Russia BIT provides that 'each Contracting Party shall reserve the right to determine economic fields and areas of activities where activities of foreign investors shall be excluded or restricted, in accordance with its applicable laws and regulations, if it is really necessary for the reason of national security'. The Investment Chapter of the RCEP, and the CPTPP allow a contracting party to apply measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. There are other common exceptions that relate to: • provisions that derogate from obligations under multilateral, or more broadly, international agreements, with respect to the protection of intellectual property rights.[64] Noteworthy, however, is the fact that Japan's BITs with China, Sri Lanka and Turkey state that they do not give rise to any rights or obligations in relation to copyright; and • measures relating to financial services, taken for prudential reasons.[65] It should be noted that the ASEAN EPA and RCEP exclude such matters as government procurement and subsidies, or grants provided by a party from the scope of application of the Investment Chapter.

10 Do this country's investment treaties exclude liability through carve-outs, non-precluded measures clauses, or denial of benefits clauses?

As to carve-outs, the ASEAN EPA and the RCEP exclude such matters as government procurement and subsidies, or grants provided by a party from the scope of application of the Investment Chapter. The India EPA and the RCEP exclude taxation measures from the scope of the agreement.

For non-precluded measures clauses see 1.3.6. "General Exceptions".

Many of Japan's IIAs provide for a 'denial of benefits' clause pursuant to which a contracting party can deny treaty protection to an investor of the other contracting party that is 'owned or controlled by an investor of a non-Contracting Party' if the 'denying Contracting Party … does not maintain diplomatic relations with the non-Contracting Party' or 'adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise'.

Except for the Colombia BIT, these IIAs also allow the host state to deny the benefit of the treaties to an enterprise of the other contracting party that is 'owned or controlled by an investor of a non-Contracting Party' (or the host state) and 'the enterprise has no substantial business activities' within the territory of the other contracting party. It should be noted that denial of benefits clauses had generally been 'subject to prior notification and consultation'. This requirement has been eliminated from many of the recent IIAs (with the exception of the BITs with Kenya, Morocco and Oman) to ensure that the denial of benefits clause can be invoked in an investor-state arbitration.

By contrast, some of Japan's BITs contain a provision expanding treaty protection to 'a [non-Contracting] company in which investors of either Contracting Party have a substantial interest', unless the non-contracting party and the other contracting party have concluded an IIA.[18] 'Substantial interest' means 'exercise of control or decisive influence' by the investor of either contracting party on the company of the non-contracting party.

Procedural rights in this country's investment treaties

11 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural rights
Scope of dispute	Most of the old generation IIAs before the Korea BIT (eg, BITs with Sri Lanka, Turkey and Hong Kong) grant an investor of a contracting party the right to submit 'any dispute' 'concerning an investment' to arbitration. This in turn allows an investor of a contracting party to bring not only a dispute arising out of a breach of substantive standard of the IIA, but also a dispute concerning any other legal instruments under which the host state assumes obligations (eg contract or domestic law) to the extent the contract concerns an investment made by the investor. However, since the introduction of the Korea BIT, most of Japan's IIAs provide that an 'investment dispute' may be submitted to arbitration. 'Investment dispute' is usually defined as 'a dispute between a Contracting Party and an investor of the other Contracting Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Agreement with respect to an investment of an investor of that other Contracting Party'. This limits the host state's consent to arbitration to disputes arising out of a breach of the IIA's substantive standards. More recently, Japan concluded a few IIAs (eg, Ivory Coast BIT) in which a contracting party consents to arbitration for a dispute arising out of a breach of an 'investment agreement' between an investor or its locally established company and the host state, as well as a dispute arising out of a breach of a substantive standard of the IIA. The narrowest scope of investor-state arbitration is stipulated in the China BIT, which only allows an investor to bring a dispute 'concerning the amount of compensation' for expropriation. Some of Japan's recent IIAs stipulate a variety of specific exceptions to the scope of arbitration including: • measures falling within the scope of the temporary safeguard measures provision (eg, the Korea BIT); • measures falling within the scope of the prudential measures provisions (eg, the Korea BIT and the China-Korea MIT); • disputes concerning the prohibition of performance requirements (eg, the Thailand EPA); • disputes arising out of a breach of national treatment, MFN treatment or prohibition of performance requirements with respect to the pre-establishment of investment (eg, the Argentina BIT and EPAs with Thailand, Brunei and Switzerland); and • disputes arising out of a breach of the umbrella clause (BITs with Colombia, Iraq and Oman).
ICSID or ad hoc arbitration	Most of Japan's recent IIAs provide a choice between recourse to ICSID, UNCITRAL ad hoc arbitration or arbitration as otherwise agreed by the parties. Special alternative fora include the SCC (ECT) and KLRCA (Malaysia EPA).
Cooling-off period	Most of Japan's IIAs have a cooling-off requirement or period of three to six months (except for the Colombia BIT with seven months and 15 days; the BITs with Sri Lanka and Egypt do not establish any cooling-off requirement).
Conduct of the arbitration	The ASEAN EPA and the CPTPP stipulate that the tribunal 'shall address and decide as a preliminary question any objection … that, as a matter of law, a claim submitted is not a claim for which an award … may be made … or that a claim is manifestly without legal merit'.[66] The BITs with Bahrain, Cambodia, Georgia, Ivory Coast, Kenya and Morocco, EPAs with Brunei, India, Indonesia and Malaysia, and the CPTPP allow the non-disputing party to the IIA to make submissions regarding the interpretation of the agreement.[67] Pursuant to the ASEAN EPA, the tribunal shall at the request of a disputing party or on its own account request a joint interpretation of any provision in the investment chapter by the contracting parties within 60 days. If the contracting parties fail to do so, the tribunal shall decide the issue on its own account after being forwarded any interpretation submitted by either contracting party.[68] Alternatively, a joint decision on the interpretation of any provision of the investment chapter can be made by the Joint Committee, which shall be binding on the tribunal.[69] The CPTPP grants the tribunal the power to allow amicus curiae submissions by any person or entity with a significant interest in the arbitral proceedings regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the disputing parties' arguments.[70]
Exhaustion of local remedies requirement	Japan's IIAs generally do not contain an exhaustion of local remedies clause, except for the Colombia BIT and the Korea–China MIT, which establish that the local administrative remedies/review procedures may not exceed six and four months, respectively.
Fork-in-the-road clause and waiver clause	Except for the BITs with Egypt and Sri Lanka, all of Japan's IIAs (with an ISDS chapter) contain a fork-in-the-road or waiver clause, or both. Some BITs and EPAs[71] expressly establish that an investor is not precluded from seeking interim (non-monetary) injunctive relief before the local courts.

Issue	Procedural rights
Prohibition of diplomatic protection	A number of Japan's BITs and EPAs[72] prohibit either contracting party to 'give diplomatic protection, or bring an international claim, in respect of an investment dispute' between an investor and the other contracting party, unless the latter 'fail[s] to abide by … an award'.
Time limits	Most of Japan's recent IIAs provide for a limitation period of three years from the date on which the investor first acquired (or should have acquired) knowledge of the loss (eg, BITs with Bahrain, Cambodia, Georgia, Ivory Coast, Korea, Morocco and Peru, and EPAs with India, Malaysia and Mexico) or five years from the dates referred to above (eg, BITs with Kuwait, Iraq and Saudi Arabia, and Switzerland EPA) within which to commence arbitration, with the exception of the Thailand EPA (two years) and CPTPP (three years and six months).
Other	The EPAs with Philippines and Australia do not contain ISDS provisions, which are yet to be negotiated.[73] The EPAs with Vietnam and Peru have incorporated their respective BITs into the EPAs by reference.[74] The RCEP's ISDS chapter is subject to further discussions among the parties under the work programme.

12 What is the approach taken in this country's investment treaties to standing dispute resolution bodies, bilateral or multilateral?

Japan has not agreed to bilateral or multilateral standing dispute resolution bodies in its investment treaties as at July 2022.

The negotiation of the Japan-EU investment protection treaty appears to have been complicated, among others, by the discrepancies in the negotiation parties' views whether the ISDS provisions are to adopt an arbitration mechanism or an investment court mechanism. In contrast to the EU, the government of Japan has repeatedly indicated that investor-state arbitration is essential to protect Japanese businesses investing overseas.

Article 9.23.11 of the CPTPP provides that if an appellate mechanism for reviewing awards rendered by ISDS tribunals is developed in the future under other institutional arrangements, the CPTPP member states shall consider whether awards rendered under article 9.29 should become subject to such an appellate mechanism. It is likely that the CPTPP's member states' consideration will be triggered if a multilateral standing appellate mechanism is established as a result of the discussions at the UNCITRAL Working Group III. Considering that this provision of the CPTPP Investment Chapter drew inspiration from the US Model BIT 2012 (article 28.10) and that majority of the CPTPP's member states have so far not shown support for the idea of a standing appellate mechanism at UNCITRAL, the existence of this provision does not necessarily mean that the CPTPP's member states will agree on subjecting arbitral awards rendered under the CPTPP to a multilateral standing appellate mechanism.

13 What is the status of this country's investment treaties?

The government of Japan is planning to further expand its network of IIAs. Also, it has repeatedly indicated that IIAs are essential for the protection of Japanese businesses investing overseas. This is because the substantive protection and ISDS under IIAs enhance the predictability and legal stability of the business environment of the host state.

Practicalities of commencing an investment treaty claim against this country

14 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	Effective as of August 2020, a notice of a dispute should be served on the Economic Dispute Settlement Division, the International Legal Affairs Bureau of the Ministry of Foreign Affairs, which is responsible for, among others, 'the matters concerning settlement of disputes under international agreements governing economic matters',[75] which includes investor-state dispute settlement under Japan's IIAs. Some of Japan's IIAs state that a notice of a dispute shall be served on the Ministry of Foreign Affairs (eg, the Colombia BIT, article 41, the Ivory Coast BIT, article 24(1)(a) and the Mexico EPA, article 94(2)(b)). Although the Georgia BIT (article 24(1)(a)) and the CPTPP (in its Investment Chapter, Annex 9-D) goes on to specify that a notice shall be served on the Ministry's Economic Affairs Bureau, the notice should be served on the aforementioned division at the International Legal Affairs Bureau, because the responsibility of the Economic Affairs Bureau to deal with investor-state dispute settlement was transferred to the International Legal Affairs Bureau on 3 August 2020.[76] In fact, the Bahrain BIT, which was agreed in June 2022, designates the International Legal Affairs Bureau as the place to which notices and other documents relating to arbitration shall be delivered (the Bahrain BIT, article 17(1)(a)).

15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	We are not aware of any publicly available information on that point (as of July 2022). However, it would be reasonable to expect that the Ministry of Foreign Affairs, in collaboration with the ministry responsible for the measure at issue, would take the lead in managing investment treaty arbitrations given that it plays a major role in negotiating investment treaties and has the authority to interpret treaties. Other ministries may be involved depending on the substance of the dispute.

16 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/External Counsel	In the event that an investment treaty arbitration is filed, in-house legal counsel for the government of Japan will likely provide some initial legal advice. If additional legal advice becomes necessary, external legal counsel will likely be hired. We have no information on whether Japan would necessarily go through a formal public procurement process when hiring external counsel.

Practicalities of enforcing an investment treaty claim against this country

17 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation	Japan ratified the Washington Convention in 1967. There is no specific implementing legislation.

18 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation	Japan acceded to the New York Convention in 1961. Although there is no specific domestic legislation for the implementation of the New York Convention, Chapter 8 of the Arbitration Act (Act No. 138 of 2003, as amended) adopts the UNCITRAL Model Law on International Commercial Arbitration of 1985 and governs the recognition and enforcement of arbitral awards irrespective of whether or not the place of arbitration is in Japan.

19 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations	The Arbitration Act of Japan applies to both domestic and foreign arbitral proceedings, irrespectively of whether it is investment or commercial arbitration.

20 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards	To our knowledge, there has been no adverse investment treaty award against Japan (as at July 2022).

21 Describe the national government's attitude towards investment treaty arbitration

Attitude of government towards investment treaty arbitration	The government of Japan has repeatedly indicated that investor-state arbitration is essential to protect Japanese businesses investing overseas. It considers that the legally binding dispute settlement mechanism enhances the predictability and legal stability of the business environment of the host state. The government has also expressed its intention to continue to pursue inclusion of investor-state arbitration clauses in the future negotiation of BITs. In a House of Representatives Committee on Foreign Affairs session of 16 May 2018, Japan's then Foreign Minister Kono stated, in response to questions concerning the EU's investment court approach, that he considers that investor-state arbitration remains the best option for Japan despite the concerns raised by the EU and other stakeholders. Then Minister Kono further stated that Japan should contribute to the discussion about a reform of investor-state arbitration (rather than pursuing the investment court approach proposed by the EU). In line with this policy, Japan, in alliance with other countries such as Chile, Israel, Mexico and Peru, has supported incremental reform of the arbitration mechanism rather than the establishment of a multilateral investment court in the discussions on ISDS Reform within the Working Group III of UNCITRAL, which started in 2017.

22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration	To our knowledge, Japanese courts have not yet had to deal with investment treaty arbitrations (as of July 2022). There is one court judgment that addressed the interpretation of an MFN clause in the Japan–Hong Kong BIT (Judgment of Tokyo High Court, 30 August 2011).

National legislation protecting inward investments

23 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

Japan does not have any legislation comprehensively regulating foreign investments. However, investment treaties are ranked higher than legislation if approved by the legislature. Therefore, it is believed that most provisions in investment treaties probably are directly applicable and can be invoked by private individuals (including foreign investors) before Japanese courts.

National legislation protecting outgoing foreign investment

24 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
The Trade Insurance and Investment Act (Act No. 67 of 1950)	The Trade Insurance and Investment Act (Act No. 67 of 31 March 1950) provides for the establishment of a government-owned special company, Nippon Export and Investment Insurance (NEXI). Its purpose is to provide insurance against risks in external transactions for which ordinary insurance cannot provide relief, including overseas investment insurance. Overseas investment insurance is defined as trade insurance indemnifying losses incurred through, among others: (i) government seizure of rights to dividends, shares or real estate; (ii) impossibility of continuation of business or inability to utilise rights for business due to specified reasons beyond the investor's control (eg, war, revolution, terrorism, civil war, strife, natural disasters, economic sanctions, general strike and nuclear incident); (iii) impossibility of continuation of business arising from infringement by a foreign state government of rights to real estate, production facilities or raw materials, mining rights, intellectual property rights, or other rights and returns that are crucial for operation of business; or (iv) restrictions on or impediments to exchange transactions. NEXI also offers certain insurance with lower premiums and wider coverage for investments and loans that enhance Japan's supply of natural resources and energy, and an untied loan insurance for the making of loans or purchasing of bonds abroad. These insurances can be used by Japanese companies (and in the case of loan insurance, also Japanese commercial banks), and cover foreign investments including capital investment (ie, establishment of a subsidiary in a foreign state, establishment of a joint venture with a foreign company, and investment in an existing foreign company), purchase of stocks, purchase of real estate and other rights, such as mining rights, and provision of loans or guarantees to foreign governments or foreign companies. To exercise their rights under a NEXI plan, insured entities must notify NEXI within one month of becoming aware of circumstances that may increase the risk of a loss. Insured entities must also notify NEXI when they actually suffer losses (for example, when such entities suffer damage due to war, revolution, natural disaster, economic sanctions, infringement of rights by a foreign state government), within one month of becoming aware of their losses. Should an insured entity receive payment related to the amount that is the subject of a notification of loss, then it must notify NEXI of those payments within one month and before submitting the request for insurance money. The insurance money should be requested within nine months of the occurrence of losses, and after the notification of losses has been submitted. It should be noted that in NEXI practice, 'infringement of rights by a foreign state government', which is one of the risks covered by the investment insurance, includes infringement of insured investor's rights under an IIA. Therefore, an insured investor can claim insurance money if its business in the host state could not continue due to an action of the host state that constitutes a breach of the IIA.

Awards

25 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties.

Awards

To date, no awards have been rendered against Japan as a respondent in an investor-state dispute (as of July 2022). On the investor side, the following award and decisions have been issued involving Japanese companies (Energy Charter Treaty):

- *JGC Corporation v. Kingdom of Spain* (ICSID Case No. ARB/15/27), Decision on Jurisdiction, Liability and Certain Issues of Quantum of 21 May 2021, and Award of 9 November 2021 (not publicly available as of July 2022); and
- *Eurus Energy Holdings Corporation v Kingdom of Spain* (ICSID Case No. ARB/16/4), Decision on Jurisdiction and Liability of 17 March 2021.

There are also two cases in which an award was rendered involving at least an affiliate of a Japanese company:

- *Saluka Investments BV v The Czech Republic* (UNCITRAL), Partial Award of 17 March 2006; and
- *Bridgestone Americas, Inc and Bridgestone Licensing Services, Inc v Republic of Panama* (ICSID Case No ARB/16/34), Award of the Tribunal of 17 August 2020.

One case of a Japanese company against the People's Republic of China – *Macro Trading Co, Ltd v People's Republic of China* (ICSID Case No. ARB/20/22) – has been discontinued for non-payment of the required advances on 10 September 2021.
Another case in which the parties were affiliates of Japanese companies – *Nusa Tenggara Partnership BV and PT Newmont Nusa Tenggara v Republic of Indonesia* (ICSID Case No ARB/14/15) – has been discontinued by order of the Secretary General on 29 August 2014.
Nissan Motor v Republic of India (UNCITRAL) was reportedly concluded by a settlement in May 2020. Thus, no award has been rendered in this case.

Pending proceedings

Recently, an international arbitration was initiated against Japan under the Japan–Hong Kong BIT.
Japanese companies have initiated three ICSID cases against Spain that are currently pending:

- *JGC Corporation v Kingdom of Spain* (ICSID Case No. ARB/15/27) (annulment proceedings);
- *Eurus Energy Holdings Corporation v Kingdom of Spain* (ICSID Case No. ARB/16/4);
- *Itochu Corporation v Kingdom of Spain* (ICSID Case No. ARB/18/25); and
- *Mitsui & Co, Ltd v Kingdom of Spain* (ICSID Case No. ARB/20/47).

There are also two cases initiated by affiliates of Japanese companies that are currently pending:

- *SMM Cerro Verde Netherlands BV v Republic of Peru* (ICSID Case No. ARB/20/14). SMM Cerro Verde Netherlands is a subsidiary of Sumitomo Metal Mining Co, Ltd; and
- *Earlyguard Limited v Republic of India* (UNCITRAL). Earlyguard is a subsidiary of Mitsui & Co, Ltd.

Reading List

26 Please provide a list of any articles or books that discuss this country's investment treaties.

Lars Markert and Shimpei Ishido, 'Japan', in The International Comparative Legal Guide to: Investor-State Arbitration 2019, Global Legal Group, 1st edition, November 2018.
Lars Markert and Shimpei Ishido, 'The Comprehensive and Progressive Agreement for Trans-Pacific Partnership', in *The Investment Treaty Arbitration Review* 2022.
Lars Markert, 'Key Issues to Consider for (Japanese) Investors Before Commencing an Investment Arbitration', in 'The Pacific Rim and International Economic Law: Opportunities and Risks of the Pacific Century', Transnational Dispute Management, 2015.
Jonathan T Stoel, Tomoko Ishikawa and Michael G Jacobson, 'Japan's Ambitious International Investment Agreement Policy – Laying the Groundwork for Future Disputes?', in 'The Pacific Rim and International Economic Law: Opportunities and Risks of the Pacific Century', Transnational Dispute Management, 2015.
Shotaro Hamamoto and Luke Nottage, 'Japan', in Chester Brown ed, Commentaries on Selected Model Investment Treaties, Oxford University Press, 2013, pages 347–391.
Louis T Wells and Chieko Tsuchiya, 'Japanese multinationals in foreign disputes: Do they behave differently, and does it matter for host countries?', in Karl P Sauvant ed, Yearbook on International Investment Law & Policy 2010-2011, Oxford, Oxford University Press, February 2012.
Luke Nottage and Romesh Weeramantry, 'Investment Arbitration for Japan and Asia: Five Perspectives on Law and Practice', in Vivienne Bath and Luke Nottage eds, Foreign Investment and Dispute Resolution Law and Practice in Asia, London, Routledge, Sydney Law School Research Paper 11/20, 2011, pages 25–52.

Shotaro Hamamoto, 'A Passive Player in International Investment Law: Typically Japanese?' in Vivienne Bath and Luke Nottage eds, 'Foreign Investment and Dispute Resolution Law and Practice in Asia', London, Routledge, Sydney Law School Research Paper 11/20, 2011, pages 53–67.
Shotaro Hamamoto and Luke Nottage, 'Foreign Investment In and Out of Japan: Economic Backdrop, Domestic Law, and International Treaty-Based Investor–State Dispute Resolution', Sydney Law School Research Paper 10/145, 26 December 2010.

Notes

1 The authors would like to thank Anne-Marie Doernenburg, Masaki Kawasaki, Marie Wako and Elizabeth Cantu for their invaluable support in the preparation of this chapter.
2 If the treaty indicates specific a cooling-off period, that period is indicated in the column. The answer 'yes' indicates that the relevant treaty does not specify the length of the cooling-off period, whereas it requires the parties to negotiate prior to submitting their dispute to arbitration (see the Bangladesh, Islamic Republic of Pakistan, Russian Federation and Turkey BITs). The answer 'no' indicates that the relevant treaty does not have such a prior negotiation requirement.
3 The answer 'yes' indicates that the treaty in question expressly grants an investor the right to bring a dispute under the treaty before local courts while 'no' means that the right to use local courts is not express in the treaty and therefore subject to local law.
4 If the treaty indicates specific a cooling-off period, that period is indicated in the column. The answer 'n/a' indicates that the relevant treaty does either not include an ISDS chapter or that the corresponding BIT has been incorporated into the respective EPA.
5 The answer 'yes' indicates that the treaty in question expressly grants an investor the right to bring a dispute under the treaty before local courts while 'no' means that the right to use local courts is not express in the treaty and, therefore, subject to local law.
6 The investment and ISDS chapter was introduced into the ASEAN EPA by way of the 2019 First Protocol. According to the website of METI and MOFA, the Protocol entered into force at least for the Kingdom of Thailand, the Republic of Singapore, the Laos People's Democratic Republic, the Republic of the Union of Myanmar, Vietnam and Japan on 1 August 2020. The Protocol also entered into force for the Brunei Darussalam on 1 October 2020; for the Kingdom of Cambodia on 1 February 2021; for the Republic of the Philippines on 1 May 2021; and for Malaysia on 1 June 2021.
7 Pursuant to article 51.10 ASEAN EPA, the MFN standard applies to compensation for losses or damages. Pursuant to article 51.23(9), the parties shall enter into discussions to agree on the application of MFN to the investment chapter.
8 Pursuant to article 51.13(9)(a) ASEAN EPA as amended by the 2019 First Protocol, consent to the submission of a claim under the ICSID Convention shall be subject to a separate written agreement between the investor and the Republic of Indonesia, and the Republic of Philippines, respectively.
9 Currently, the Australia EPA does not include an ISDS Chapter. Pursuant to articles 14.18 and 14.19 of the EPA, the sub-committee on investment will continue to negotiate ISDS provisions.
10 Pursuant to article 89(5) Chile EPA, the six months periods starts from the events giving rise to the claim. This is different from the regular cooling off periods that start from the date on which the investor requested negotiations.
11 Following the required ratification by six states, namely Mexico, Japan, Singapore, New Zealand, Canada, Australia and Vietnam, between June and November 2018, the CPTPP entered into force on 30 December 2018. Peru became the seventh ratifying state in July 2021. Other states that have expressed interest in acceding to the CPTPP include the UK, Colombia, Thailand, South Korea, the Philippines, Taiwan, China and Ecuador.
12 Pursuant to article 2(3) Peru EPA, the Peru BIT is incorporated into this EPA.
13 Pursuant to article 107 Philippines EPA, the ISDS chapter is still to be negotiated.
14 The RCEP was signed on 15 November 2020 by 15 states, ie, 10 ASEAN member states (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam) as well as five non-ASEAN states (Australia, China, Japan, New Zealand and South Korea). The RCEP entered into force on 1 January 2022, for ten countries, Australia, New Zealand, Brunei Darussalam, Cambodia, China, Japan, Laos, Singapore, Thailand and Vietnam as an original party. The RCEP also entered into force for the Republic of Korea on 1 February 2022 and for Malaysia on 18 March 2022. Other countries interested in ratifying or acceding to the RCEP include Thailand and Hong Kong.
15 Pursuant to article 89(2), the contracting party merely has a duty to 'favourably consider' a possible MFN treatment.
16 Pursuant to article 9(4) Vietnam EPA, the Vietnam BIT is incorporated into this EPA.
17 Under the Hong Kong BIT, the term 'investors' includes, in respect of Hong Kong, 'physical persons who have the right of abode in its area'.
18 BITs with Bangladesh, China, Egypt, Hong Kong (with respect to Japanese investors), Mongolia, Pakistan, Russia, Sri Lanka and Turkey.
19 BITs with Argentina, Armenia, Bahrain, Cambodia, Colombia, Georgia, Iran, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Korea, Kenya, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, UAE, Ukraine, Uruguay, Uzbekistan, Vietnam, the China–Korea MIT, EPAs with ASEAN, Australia, Brunei, Chile, India, Indonesia, Malaysia, Mongolia, Philippines and Thailand, the CPTPP, and the RCEP.
20 BITs with Bangladesh, China, Egypt, Mongolia, Pakistan, Russia, Sri Lanka and Turkey.
21 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Ivory Coast, Iraq, Israel, Kazakhstan, Kenya, Kuwait, Morocco (however, it does not contain 'seeks to make'), Mozambique, Myanmar, Papua New Guinea, Peru, UAE and Uzbekistan, and EPAs with Australia, Brunei, Chile, Mongolia, Mexico, Singapore, Switzerland and Thailand, the CPTPP, and the RCEP.
22 BITs with Argentina, Colombia, Georgia, Iran, Iraq, Kenya, Morocco, Oman, Peru, UAE, Uruguay, the China–Korea MIT, EPAs with ASEAN, Australia, Brunei, Chile, India , Malaysia, the CPTPP, and the RCEP.
23 BITs with Colombia, Georgia, and Uruguay, EPAs with ASEAN, Brunei, Chile and Malaysia, the CPTPP, and the RCEP.
24 The Uruguay BIT.
25 The Colombia BIT.
26 BITs with Argentina, Israel, Jordan, Morocco, Peru and Ukraine, and EPAs with Mexico and Chile.

27 BITs with Argentina, Armenia, Bahrain, Cambodia, Colombia, Georgia, Ivory Coast, Iran, Iraq, Israel, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, UAE, Ukraine, Uruguay, Uzbekistan and Vietnam, the China–Korea MIT, EPAs with Australia, Brunei, Chile, Malaysia, Mexico, Mongolia, Philippines, Singapore and Switzerland, the CPTPP, the ECT, and the RCEP.

28 BITs with Armenia, Bahrain, Bangladesh, China, Colombia, Egypt, Georgia, Iran, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Morocco, Mozambique, Myanmar, Oman, Pakistan, Papua New Guinea, Russia, Saudi Arabia, Sri Lanka, Turkey, Ukraine, United Arab Emirates, Uruguay, Uzbekistan and Vietnam, China–Korea MIT, and EPAs with India, Mongolia and Switzerland.

29 BITs with Bahrain, Bangladesh, China, Hong Kong, Mongolia, Oman, Pakistan, Russia, Sri Lanka, Turkey and Ukraine.

30 BITs with Argentina, Armenia, Cambodia, Colombia, Egypt, Georgia, Iran, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Korea, Laos, Morocco, Mozambique, Myanmar, Papua New Guinea, Peru, Saudi Arabia, UAE, Uruguay, Uzbekistan and Vietnam, and China–Korea MIT.

31 BITs with Bahrain, Hong Kong, Morocco, Pakistan, Russia, Saudi Arabia and Sri Lanka.

32 BITs with Argentina, Armenia, Bahrain, Cambodia, Colombia, Georgia, Iran, Israel, Ivory Coast, Jordan, Kenya, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, UAE, Ukraine and Uruguay, China–Korea MIT, and EPAs with ASEAN, Australia, Brunei, Chile, India, Mexico, Mongolia, Philippines and Thailand, the CPTPP, and the RCEP.

33 The Hong Kong BIT refers to a 'deprivation'.

34 BITs with Bahrain, Cambodia, China, Hong Kong, Iran, Iraq, Kazakhstan, Kenya, Korea, Kuwait, Laos, Mongolia, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, UAE, Ukraine, Uzbekistan, Vietnam, China–Korea MIT, EPAs with India, Indonesia, Mongolia, Philippines, Singapore, Switzerland and Thailand, and the ECT.

35 The Morocco BIT does not specifically refer to the TRIPS Agreement, but instead to 'international agreements on intellectual property to which both Contracting Parties are parties.'

36 See, eg, Peru BIT and EPAs with Mexico, Chile, Thailand and Indonesia.

37 See, eg BITs with Korea and Vietnam, and Philippines EPA.

38 See, eg, the BITs with Argentina, Armenia, Ivory Coast and Israel, and the RCEP.

39 See, eg, the BITs with Iraq and Ukraine.

40 BITs with Argentina, Armenia, Bahrain, Bangladesh, Cambodia, Colombia, China, Egypt, Georgia, Hong Kong, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Kuwait, Morocco, Mozambique, Mongolia, Myanmar, Oman, Pakistan, Papua New Guinea, Peru, Russia, Sri Lanka, Turkey, UAE, Ukraine, Uruguay, China–Korea MIT, and EPAs with ASEAN, Australia, Brunei, Indonesia and Malaysia, Mongolia and Singapore, the CPTPP, and the RCEP.

41 This is stated in paragraph 3 of the Protocol attached to the China BIT, and illustrations of 'treatment less favourable' are set out in attached Agreed Minutes.

42 BITs with Argentina, Bahrain, Georgia, Iran, Israel, Kazakhstan, Kenya, Korea, Morocco, Oman, Saudi Arabia, UAE, Ukraine and Vietnam and EPAs with Switzerland and Thailand.

43 BITs with Bangladesh, China, Egypt, Iraq, Hong Kong, Kuwait, Kazakhstan, Mongolia, Pakistan, Russia, Saudi Arabia, Sri Lanka, Turkey, UAE and Uzbekistan.

44 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Iraq, Israel, Ivory Coast, Jordan, Kenya, Morocco, Oman, Peru, Ukraine and Uruguay, China–Korea MIT, EPAs with Australia and Switzerland, the CPTPP and the RCEP.

45BITs with Argentina, Georgia, Ivory Coast, Korea, Laos and Vietnam, EPAs with Brunei, Indonesia and Malaysia, and the RCEP.

46 BITs with Armenia, Cambodia, Colombia, Georgia, Israel, Ivory Coast, Kuwait, Mozambique, Myanmar, Peru, Uruguay, Uzbekistan, the EPAs with Australia, Chile, India, Mexico, Mongolia, Philippines, Singapore and Switzerland, the CPTPP, and the RCEP.

47 BITs with Argentina and Uruguay, EPAs with Australia and Chile, and the CPTPP.

48 BITs with Argentina, Armenia, Cambodia, Colombia, Georgia, Israel, Ivory Coast, Korea, Kuwait, Laos, Mozambique, Myanmar, Peru, Uruguay and Uzbekistan, EPAs with Australia, Brunei, Chile, India, Indonesia, Malaysia, Mongolia, Philippines, Thailand and Switzerland, and the CPTPP.

49 BITs with Argentina, Bahrain, Cambodia Colombia, Georgia, Israel, Ivory Coast, Kuwait, Laos, Mozambique, Myanmar, Peru, Uruguay and Uzbekistan, EPAs with Australia, Brunei, Chile, India, Indonesia, Thailand, Malaysia, Mexico, Mongolia, Philippines, Singapore and Switzerland and the CPTPP.

50 BITs with Argentina, Armenia, Bahrain, Cambodia, Colombia, Georgia, Ivory Coast, Iran, Israel, Jordan, Kenya, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, UAE, Ukraine, Uruguay, the China–Korea MIT, the EPA with ASEAN, Australia, Brunei, Chile, India, Mexico, Mongolia, Philippines, Thailand and Switzerland, the CPTPP, and the RCEP.

51 BITs with Cambodia, Colombia, Hong Kong, Iran, Iraq, Kazakhstan, Kuwait, Laos, Mozambique, Myanmar, Oman, Papua New Guinea, Russian Federation, UAE, Ukraine, and Uzbekistan, ECT, China–Korea MIT, EPAs with India, Mongolia and Switzerland.

52 The Hong Kong BIT, article 6(2), Protocol, article 1.

53 BITs with Armenia, Cambodia, Colombia, Georgia, Iran, Iraq, Israel, Ivory Coast, Kazakhstan, Kenya, Korea, Kuwait, Laos, Morocco, Mozambique, Myanmar, Peru, PNG, UAE, Ukraine, Uruguay, Uzbekistan and Vietnam, EPAs with ASEAN, Australia, Chile, India, Indonesia, Malaysia, Mexico, Mongolia, Philippines, Singapore, Switzerland, the CPTPP, and the RCEP.

54 The Uzbekistan BIT, article 5(2)(3).

55 BITs with Argentina, Armenia, Bahrain, Cambodia, China, Colombia, Georgia, Hong Kong, Iran, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, UAE, Ukraine, Uruguay, Uzbekistan, Vietnam, China–Korea MIT, the ECT, all Japan's EPAs, and the RCEP.

56 BITs with Argentina, Armenia, Bahrain, Bangladesh, Cambodia, Colombia, Georgia, Kenya, Korea, Kazakhstan, Kuwait, Laos, Iran, Iraq, Israel, Ivory Coast, Jordan, Morocco, Mozambique, Myanmar, Oman, Papua New Guinea, Peru, Saudi Arabia, Sri Lanka, Turkey, UAE, Uruguay, Uzbekistan and Vietnam, China–Korea MIT and EPAs with ASEAN, Australia, Brunei, Chile, India, Indonesia, Malaysia, Mexico, Mongolia, Philippines, Singapore, Switzerland, Thailand, the CPTPP, and the RCEP.

57 BITs with Bahrain, Hong Kong, Iraq, Kazakhstan, Kuwait, Morocco, Oman, Papua New Guinea, Russia, Ukraine and Uzbekistan and the EPA with Switzerland.

58 BITs with Bangladesh, China, Egypt, Hong Kong, Ivory Coast, Iran, Pakistan, Russia, Sri Lanka and Turkey.

59 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Iran, Israel, Jordan, Korea, Kuwait, Morocco, Mozambique, Myanmar, Peru, Uzbekistan, and all of the EPAs except for the CPTPP (in the case of the Mexico EPA, only in relation to prohibition of performance requirements).

60 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Iran, Israel, Ivory Coast, Jordan, Kuwait, Korea, Laos, Morocco, Mozambique Myanmar, Peru, Uruguay, Uzbekistan and EPAs with ASEAN, Australia, Brunei, Chile, Indonesia, Malaysia, Mongolia, Singapore and Thailand.

61 BITs with Argentina, Israel, Uruguay, EPAs with ASEAN, Australia, Brunei, Chile, Indonesia, Malaysia, Mexico, Mongolia, Singapore and Thailand, the CPTPP, and the RCEP (in the case of the Mexico EPA and the CPTPP, only in relation to prohibition of performance requirements).

62 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Iran, Israel, Ivory Coast, Jordan, Korea, Kuwait, Laos, Morocco, Mozambique, Myanmar, Peru, Uruguay, Uzbekistan, Vietnam, all of the EPAs, the CPTPP, and the RCEP (in the case of the Mexico EPA and the CPTPP, only in relation to prohibition of performance requirements).

63 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Iran, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Peru, Russia, UAE, Ukraine, Uruguay, Uzbekistan, Vietnam, the China–Korea MIT and EPAs with ASEAN, Australia, Brunei, Mongolia, Singapore, India and Philippines.

64 BITs with Argentina, Armenia, Bahrain, Bangladesh, Cambodia, Colombia, Georgia, Hong Kong, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Oman, Papua New Guinea, Mexico, Mongolia, Mozambique, Pakistan, Peru, Saudi Arabia, UAE, Ukraine, Uzbekistan and Vietnam, and the China–Korea MIT.

65 BITs with Argentina, Armenia, Bahrain, Colombia, Georgia, Iran, Iraq, Israel, Ivory Coast, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Laos, Morocco, Mozambique, Myanmar, Oman, Peru, Papua New Guinea, Saudi Arabia, UAE, Ukraine, Uzbekistan and Vietnam, China-Korea MIT and EPAs with Brunei, India, Indonesia, Malaysia, Mongolia, Philippines, Singapore and Thailand.

66 Article 9.23(4) CPTPP and article 51.13(17) 2019 First Protocol of the ASEAN EPA. See also article 27(2) Argentina BIT.

67 Article 16(9) Bahrain BIT, article 17(16) Cambodia BIT, article 23(14) Georgia BIT, Article 23(13) Ivory Coast BIT, article 15(11) Kenya BIT, article 16(9) Morocco BIT, article 9.23(2) CPTPP, article 67(18) Brunei EPA, article 96(16) India EPA, article 69(16) Indonesia EPA and article 85(13) Malaysia EPA. See also article 24(13) Armenia BIT and article 17(1) UAE BIT.

68 Article 51.13(20)(a) ASEAN EPA.

69 Article 51.13(20)(b) ASEAN EPA.

70 Article 9.23(3) CPTPP. See also article 27(1) Argentina BIT.

71 BITs with Argentina, Armenia, Bahrain, Cambodia, Colombia, Georgia, Ivory Coast, Israel, Jordan, Kazakhstan, Kuwait, Laos, Peru, UAE and Uruguay, and EPAs with ASEAN, Brunei, Chile, CPTPP, India, Indonesia, Malaysia, Mexico, Mongolia, Switzerland and Thailand.

72 BITs with Cambodia, Colombia, Kazakhstan, Laos, Peru, Saudi Arabia and UAE, and EPAs with Brunei, India, Indonesia, Malaysia, Mongolia, Singapore and Switzerland.

73 Article 107 Philippines EPA and article 14.19 Australia EPA.

74 Article 2(3) Peru EPA and article 9(4) Vietnam EPA.

75 Article 82, Item 2 of Cabinet Order on Organisation of Ministry of Foreign Affairs (Cabinet Order No. 249 of 7 June 2000, as amended on 31 July 2020)

76 Cabinet Order Amending Cabinet Order on Organisation of Ministry of Foreign Affairs (Cabinet Order No. 232 of 31 July 2020); see also, the notice on the website of Ministry of Foreign Affairs dated 31 July 2020, available at https://www.mofa.go.jp/mofaj/press/release/press4_008637.html (only in Japanese).

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