

An ALM Publication.

2016
SEVENTH EDITION | 第七版

China Outbound Investment Guide

中国境外投资指南

Expert analysis from leading
law firms around the world
全球各地顶尖律所的专家分析

A fully bilingual guide co-published with
一本全双语指南，合作出版的律所包括：

Atsumi & Sakai
Basham, Ringe y Correa
Harney Westwood & Riegels
Homburger
Ketenci&Ketenci
Mayne Wetherell
Paul Hastings
Pinheiro Neto Advogados
Samvād: Partners
WongPartnership

CHINA
LAW & PRACTICE

Japan

Atsumi & Sakai

Ryuichi Nozaki, Kumpei Ohashi and Eiji Nishiwaki



Section 1: China outbound investment

a. Is the government generally supportive of China outbound investment (COI)? Which government, and regional, bodies are responsible for driving COI in Japan?

Under its "Invest Japan" initiative, the Japanese government has been actively promoting foreign direct investment (FDI) in Japan in recent years, setting up the Council for Promotion of Foreign Direct Investment in Japan to spearhead these activities. On May 20, 2016, the Council released its *Policy Package for Promoting Foreign Direct Investment into Japan to Make Japan a Global Hub*, which emphasizes the need to improve regulations and administrative procedures, attract and foster globally competitive human resources, and improve the living environment for foreign nationals. The initiative has been met with some success and there was a significant growth in COI last year.

The Japan External Trade Organization (JETRO), a government-related organization that offers information and support to foreign investors, calculated that China was the second largest source of foreign investment in Japan from 2003 to 2015.

“ The key sectors that have attracted Chinese investment are services, renewable energy, tourism, manufacturing, infrastructure, ICT and life sciences ”

b. What are the key sectors in Japan that attract, or to which the government is seeking to attract, COI?

According to JETRO, the key sectors that have attracted Chinese investment are services, renewable energy, tourism, manufacturing, infrastructure, ICT and life sciences. Travel agencies that use online booking systems for airline tickets are also growing.

c. What are some notable Chinese investments or M&A that have recently taken place in Japan?

On June 21, 2016, SoftBank Group Corp. announced that it would sell an 84% stake in Finnish game developer Supercell Oy to Tencent Holdings Ltd. in a deal that values the company at about \$10.2 billion. On March 30, 2016, Toshiba Corp. announced that it would sell an 80.1% stake in its home

appliance unit, Toshiba Lifestyle Products & Services Corporation, to Midea Group Co. for approximately \$473 million.

Section 2: Investment vehicles and capital

a. What are the most common legal entities and vehicles used for COI in Japan? How long do they take to become operational?

The most common legal entity for COI in Japan is a limited liability joint stock company, or *kabushiki kaisha* (KK), established under the *Companies Act*. A KK must be registered with the relevant Legal Affairs Bureau. The date of establishment is the date of the application for registration, and the KK may commence operations from that date. The registration process usually takes around four weeks where the KK is to have foreign directors or shareholders.

b. What are the key criteria for establishment and operation of these vehicles that are relevant to COI (e.g. capital requirements, local directors)?

There are various management structures available for a KK, but all KKs must have at least one shareholder and one director, and at least one director must be a "representative director". It is common for a KK to have a board consisting of three or more directors. It is not necessary for a KK to have any directors or shareholders reside in Japan, though it is convenient to have a resident director or local agent to handle filings and the like. A KK must have a local bank account to receive its share capital. A KK's representative director has broad authority to act for the entity without reference to other directors or the board (if any), so the appointed individual must be chosen carefully. A KK's minimum capital is just ¥1 (Rmb0.064), although it is usually capitalized at much higher amounts for commercial credibility.

Section 3: Investment approval

a. Explain the process and timing for foreign investment approval (including any national security review).

The *Foreign Exchange and Foreign Trade Act* (FEFTA) is the main legislation applicable to foreign investments. Under the FEFTA, foreigners are, in principle, generally able to invest in Japan without specific regulatory approval. In extremely rare cases, obtaining prior permission for certain investments may be required, so as to ensure that Japan fulfills its obligations under international treaties or other agreements when deemed

necessary, in order for Japan to contribute to international peace efforts or to maintain peace and security in Japan. For example, a foreign investor is required to obtain prior approval from the Minister of Finance before entering into transactions with individuals and/or organizations who are subject to an asset freeze or other economic sanctions under the FEFTA.

b. Briefly explain the investment restrictions for any specially regulated/restricted sectors (e.g. natural resources, financial services, telecom and infrastructure), including whether the government is entitled to any special rights (e.g. golden shares) in those sectors.

The FEFTA restricts foreign investment in certain industries, including agriculture, forestry, fisheries, petroleum, leather, and air and marine transportation. The FEFTA also restricts foreign investment into industries that are relevant to national security, public order and general public safety. These include businesses related to the manufacture or repair of weapons or aircraft, space exploration, nuclear power and related goods or products that could be used for military purposes, electricity, gas and water supply, telecommunications, broadcasting, railway, passenger carriage, and vaccine manufacturing.

Any inbound direct investment into a restricted business requires a before-the-fact filing to be made between one and six months prior to making the investment. The filing is made with the Ministry of Finance and any other ministries with jurisdiction over the target business. A waiting period of 30 days from the date of filing applies before the investment can be effected; this is often shortened to two weeks, but may be extended up to five months. During the waiting period, the foreign investor cannot make the investment, and if it is found that the investment falls under a restricted category, it may need to be revised or possibly refused.

In addition to these restrictions under the FEFTA, legislation regulating certain industries or businesses may also restrict foreign ownership of corporations engaging in them. The scope of the restrictions varies depending on the nature of business. For example, under the *Civil Aeronautics Act*, foreign investment in an air transportation services business may be refused by the relevant authority if the deal results in one-third or more of the voting rights in the company operating the business being directly or indirectly owned by foreign individuals or corporations. Other statutes, such as the *Broadcast Act*, set similar restrictions in their respective industries. When contemplating the acquisition of shares in a Japanese company, it is important to check both the FEFTA and any specific statutes governing the company's business.

c. Which authority oversees competition clearance, when is notification mandatory, and what is the merger control process (including whether pre- or post-closing)?

The Japan Fair Trade Commission (JFTC) administers

matters related to the *Act on Prohibition of Private Monopolization and Maintenance of Fair Trade*. Most forms of mergers and acquisitions exceeding certain thresholds (for example, based on the domestic sales revenue of the companies involved) are subject to review by the JFTC and a 30-day waiting period from the date of the filing. During the waiting period, the purchaser may not acquire or hold shares of the target company, and the transaction may be barred if deemed to substantially restrain competition in any particular field of trade.

d. Are there any unique processes that could potentially block a foreign investment (e.g. consent from labor unions)?

When acquiring shares in a KK from an existing shareholder, the statutes of the KK may require the approval of the board and, in limited cases, the other shareholders before the shares can be transferred to the purchaser. There is no statutory or regulatory requirement to obtain consent for an investment from unions, employee representatives, trade bodies or other third parties.

e. Are there approval requirements when a foreign investor increases or exits its investments?

Foreign investors are generally able to make investments in Japan without approval from regulatory authorities.

However, when a foreign investor increases its investment in a business, certain transactions subject to examination in advance under the FEFTA require a before-the-fact filing in the same manner as the initial investment, though the waiting period may be shorter as the regulator has already approved the initial purchase. Others may require filing a post-transaction report with the authorities through the Bank of Japan. If an additional investment takes the foreign shareholding percentage above the ownership restriction (see Section 3b), the additional investment in excess of the cap will be refused.

As for exits, foreign investors may be required to submit a post-transaction report through the Bank of Japan. The acquisition of an existing foreign investor's stake in a business may also be subject to the restrictions described in this section.

Section 4: Tax and grants

a. Are there tax structures and/or favorable intermediary tax jurisdictions that are particularly useful for FDI into Japan?

There are no specific structures and/or favorable intermediary tax jurisdictions that are particularly useful for FDI. However, it may be worth considering investing in Japan from an affiliated company located in a country that has a favorable tax treaty with Japan, such as Singapore or Hong Kong.

b. What are the applicable rates of corporate tax and withholding tax on dividends?

In Japan, the effective corporate tax rate is around 31%, and losses may be carried forward under certain conditions. The withholding tax rate on dividends paid in Japan is generally 20.42%.

If an individual non-resident in Japan or a foreign corporation has a permanent establishment in Japan and the dividend income is attributable to that permanent establishment in Japan, the withholding tax rate on the dividends is 20.42% and the aggregate income, including dividends, of the Japanese non-resident is subject to personal income tax or corporate tax. Tax treaty rules are not applicable to Japanese non-residents with a permanent establishment if the dividends are attributable to that establishment.

If a Japanese non-resident does not have a permanent

establishment in Japan or the Japanese non-resident has a permanent establishment in Japan but the dividend income is not attributable to it, a 20.42% withholding income tax is then payable on the dividends, unless otherwise provided for in the applicable tax treaty. There is no Japanese tax payable on such dividend payments other than withholding (see Section 4e for the Japan-China tax treaty).

c. Does the government have any FDI tax incentive schemes in place?

In order to facilitate investment in Japan, the national and local governments offer various tax incentives, such as special economic zones. There are two types of special economic zones with tax benefits in Tokyo: the National Strategic Special Zones and the Special Zone for Asian Headquarters. There are other special economic zones outside of Tokyo.

Companies that are directly engaged in a business designated by the relevant minister in a National Strategic Special Zone are eligible for either a taxable income deduction of 20%, an investment tax credit, or accelerated depreciation, provided that certain conditions are met.

Local subsidiaries of foreign companies newly established as an Asian regional headquarters or research and development center in Tokyo's Special Zone for Asian Headquarters are eligible for national and metropolitan tax breaks, such as an investment tax credit, accelerated depreciation, and exemption from real estate acquisition tax (buildings) or fixed assets tax (buildings and depreciable assets), if certain conditions are fulfilled.

There are other general tax incentives that are also available for FDI.

d. Other than through taxes, does the government provide any other financial support to investors? If so, please provide an overview.

Both the Japanese national government and local governments offer various subsidies to encourage investment. For example, JETRO offers a Subsidy Program for Global Innovation Centers, which subsidizes certain costs for foreign companies setting up innovation centers or conducting experimental and feasibility studies with respect to regenerative medicine or internet of things (IoT) in collaboration with local firms and organizations in Japan.

The Tokyo Metropolitan Government subsidizes a portion of the costs, such as recruitment costs, incurred by foreign companies in setting up a new Asian regional headquarters or research and development center within the Special Zone for Asian Headquarters.

There are other subsidies available for FDI under certain conditions.

e. Are there any reciprocal tax arrangements between

AUTHOR BIOGRAPHIES

Ryuichi Nozaki



Ryuichi Nozaki has been a partner in Atsumi & Sakai since 2007, and head of its London office since January 2015. His core practice areas are banking, structured finance, financial regulation, fintech, M&A, investment funds and data protection.

Mr. Nozaki has a law degree from Keio University, and an LLM from Boston University. He was admitted as an attorney (Bengoshi) in Japan in 2000, and worked at the London office of Mayer Brown from 2007 to 2008.

Kumpei Ohashi



Kumpei Ohashi, of counsel, joined Atsumi & Sakai in January 2016, and has significant experience in intellectual property law, commercial law, business rehabilitation and bankruptcy law.

He has a law degree from the University of Tokyo and an LLM from Columbia Law School, and was admitted as an attorney (Bengoshi) in Japan in 2002.

Eiji Nishiwaki



Eiji Nishiwaki is a senior associate in Atsumi & Sakai. His core practice areas are banking and finance, real estate and general corporate law. He has been actively involved in complex real estate and other investment transactions.

Mr. Nishiwaki holds a BA in Social Science from Waseda University, and an LLM from the University of Southern California (USC) Gould School of Law. He was admitted as an attorney (Bengoshi) in Japan in 2005.

“ The [Japan-China tax treaty] reduces the withholding tax rate for dividend payments, interest and royalties to 10% ”

Japan and China? If so, how can they aid investors?

Under the Japan-China tax treaty, certain measures can be taken to avoid double taxation. For example, the treaty reduces the withholding tax rate for dividend payments, interest and royalties to 10%.

Section 5: FX controls and local operations

a. What foreign currency or exchange restrictions should investors be aware of?

Remittances of money from Japan to China are regulated by the FEFTA.

A remittance requires permission from the Ministry of Finance if it is for the purpose of particular business activities in a foreign country, such as fishery or manufacturing leather or leather products. A remittance of more than ¥30 million (Rmb1.91 million) from Japan to a foreign country requires an after-the-fact report to the Ministry of Finance, unless an exception applies.

b. Are there any legal restrictions on bringing in foreign workers? How difficult is it to secure expatriate visas for shareholder representatives, senior managers and workers in practice?

A foreign citizen wishing to work in Japan must obtain a certificate of eligibility and a visa in the appropriate category. This usually takes one to three months. A foreign citizen wishing to visit Japan must have a visa, unless the visa exemption waiver program applies. This allows a stay of up to 90 days. Chinese citizens, who cannot use the visa exemption program, require a visa to visit Japan; the category of visa will depend on the nature of the visit and intended activities. A short-stay visa allows the holder to conduct market research and other activities in Japan in preparation for future investment, though he is not permitted to work. Other visas will specify the nature of the activities which the visa holder may engage in.

It is not difficult to obtain a visa for a short visit, e.g. to attend a shareholders' meeting or visit a factory. In order to obtain a work visa, the applicant needs to prove the need to work in Japan, and that he has appropriate qualifications and the means to support himself.

A visa application will be refused if the applicant has one of a list of serious illnesses or has been convicted of certain criminal offenses.

c. What are the requirements and process for purchasing commercial property?

When a non-resident acquires real property or any right concerning real property from a resident, the FEFTA requires an after-the-fact report of the transaction to be filed with the Ministry of Finance within 20 days from the acquisition, unless certain exceptions apply. Other than the FEFTA, there are no national laws that substantially restrict foreign ownership of real property, though some local ordinances require a before-the-fact filing.

Section 6: Dispute resolution

a. Does Japan have a bilateral investment protection treaty with China or other locations commonly used for investing into the country?

The *Agreement among the Government of Japan, the Government of the Republic of Korea and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment* (Trilateral Investment Agreement) came into effect on May 17, 2014 and promotes government transparency and investor protection, including clauses regarding national treatment of investors, transfers relating to investments (e.g. profits, capital gains, dividends, and payments made under a contract), intellectual property and dispute settlement. Disputes between the parties arising from the interpretation or application of the Trilateral Investment Agreement can be submitted to arbitration.

b. How efficient are local courts' enforcement and dispute resolution proceedings, and are there any procedural features foreign investors must be aware of?

Japan is culturally averse to litigation and parties seek to settle disputes without recourse to the courts if at all possible. Even if a matter is brought before a court, the judge will seek to assist the parties in coming to a settlement.

The Japanese litigation process does not have a general system of discovery as found in common law jurisdictions. Documents and evidence are requested by the parties as and when needed by application to the court. There is also no single trial hearing, as arguments are heard in separate hearings as they arise. These factors can result in cases lasting years and, by their nature, encourage settlement. A party awarded judgment is not automatically entitled to recover its costs from the losing party, and although the court may order the losing party to pay the successful parties' litigation costs, this usually does not include attorney's fees.

Documents and arguments put before the courts must be in Japanese; this being so, and given the other factors mentioned above, it is not uncommon for investment agreements between Japanese and foreign parties to be in English, governed by a third-party law (commonly English or New York) and subject to arbitration, usually in a “neutral” venue, such as London or Singapore.

c. Do local courts respect foreign judgments and are international arbitration awards enforceable?

Judgments obtained in foreign courts are generally

enforceable in Japanese courts if there is reciprocity and certain procedural requirements are satisfied. However, Japanese court judgments are not enforceable in China as there is no reciprocity, and therefore a Chinese court judgment is not enforceable in Japan.

Arbitration awards obtained abroad are enforceable in Japan under the *Convention on Recognition and Enforcement of Foreign Arbitration Awards (New York, 1958)* (New York Convention) if they are rendered in a member country, including China. Court procedures to enforce such arbitration awards may take several months.

For Your Legal Needs in Japan



Full-service Tokyo Law Firm
Experienced Chinese Lawyers
Japanese Lawyers Experienced in China Matters
London & Frankfurt Offices
Recognised Excellence

- ***Chambers Global 2016*** – Leading Firm
- ***Chambers Asia Pacific 2016*** – Leading Firm
- ***The Legal 500 Asia Pacific 2016*** – Tier 1 Independent Local Firm
- ***Asialaw Profiles 2016*** – Outstanding Firm
- ***IFLR 1000 2016*** – Tier 1 Recommended Firm

Contact: China Team

Guohui Fan 范国辉

Senior Partner / Registered Foreign Lawyer

(The Laws of the People's of Republic of China)

E-mail : info@aplaw.jp

Tel : +81 (0) 3 5501 2111



Contact: Investment/M&A Team

Masayuki Matsuura

Partner

E-mail : manda.pg.core.lawyers@aplaw.jp

Tel: +81 (0) 3 5501 1387



日本

渥美坂井律师事务所

野崎竜一、大桥君平和西脇英司



第一节：中国境外投资

1. 总体来说，政府支持中国境外投资吗？哪个国家或地方机构负责促进中国在日本的投资？

近年来，日本政府通过“对日直接投资”计划积极推进外国直接投资，设立了对日投资促进会议来促进这类活动。2016年5月20日，该会议发布了《使日本成为全球枢纽而促进外国对日直接投资的政策包》，强调需要改善法规和行政程序，吸引和培养有全球竞争力的人力资源，改善外国人的生活环境。这个计划已经取得一些成功，去年的中国对日直接投资有了大幅增长。

根据负责向外国投资者提供信息和支持的政府官方组织日本贸易振兴机构（JETRO）的计算，从2003年至2015年，中国是外国对日投资的第二大来源。

“

吸引中国投资主要行业是服务业、可再生能源、旅游业、制造业、基础设施、信息通信技术和生物科技

”

2. 日本哪些主要行业吸引中国境外投资，或者说政府希望将中国境外投资吸引到哪些主要行业？

据日本贸易振兴机构提供的信息，吸引中国投资主要行业是服务业、可再生能源、旅游业、制造业、基础设施、信息通信技术和生物科技。网上预订机票的旅行社也在发展中。

3. 最近中国在日本进行了哪些重大的投资或并购交易？

2016年6月21日，软银集团宣布将它在芬兰游戏开发公司Supercell Oy的84%股权出售给腾讯控股有限公司，此项交易将该公司作价大约102亿美元。2016年3月30日，东芝株式会社宣布以大约4.73亿美元价格将其家电业务主体东芝生活产品株式会社的80.1%股权出售给美的集团有限公司。

第二节：投资工具和资本

1. 中国境外投资在日本最常用哪些法律实体和工具？要多少时间便可投入运作？

外国对日直接投资最常用的法律实体是根据《公司法》设立的有限责任股份公司，即株式会社。株式会社必须在有关的法务局注册。株式会社的成立日期是注册申请日期，可从该日起营运。如果株式会社有外国董事或股东，注册程序一般需要大约四个星期。

2. 关于这些投资工具的设立和营运，有哪些主要规定适用于中国境外投资（例如，资本要求、本地董事）？

株式会社有多种管理结构，但所有株式会社都必须至少有一名股东和一名董事，而且至少有一名董事是“代表董事”。株式会社不必有居住在日本的董事或股东，不过若有常驻董事或当地代理人办理申报事务会比较方便。株式会社必须有当地银行账户收取股本。株式会社的代表董事有广泛的权力代表本公司行事，而不必与其他董事或董事会（如有）商议，所以必须谨慎任命。株式会社的最低资本只是1日元（人民币0.064元），不过出于商业诚信考虑，资本额一般会高很多。

第三节：投资审批

1. 请说明审批外国投资（包括任何国家安全审查）的程序和时间。

《外汇及外贸管理法》（FEFTA）是适用于对日投资的主要立法。根据FEFTA，外国人对日投资在原则上一般无需特别监管审批。在极其特殊情况下，某些投资可能需要获得事先许可，以确保日本在认为有必要时能履行其在国际条约或其他协议下的义务，使日本能够为国际和平作出贡献，或维护日本的和平和安全。例如，外国投资者要与在根据FEFTA下资产被冻结或受到其他经济制裁的个人或组织进行交易，须事先获得财务大臣的批准。

2. 请简单说明一下对任何受特殊监管/限制的领域（例如自然资源、金融服务、电信和基础设施）的投资限制，包括政府是否在这些行业里有特殊权利（例如黄金股份）。

FEFTA限制外资对某些行业的投资，包括农林渔业、石油、制革和海空运输。FEFTA还限制外资对涉及国家安全、公共秩序和公共安全的行业进行投资。这包括涉及武器或飞机制造或维修、太空探索、核能的业务，以及可用于军事用途的相关商品或产品、电力、供气供水、电信、广播、铁路、客运和疫苗制造。

在受限制业务领域进行对日直接投资，需要在投资之前一至六个月向财务省和相关产业主管部门作出事先申报。自申报日期起需等待30日才能进行投资；这段期间往往会缩短至两星期，也可能会长达五个月。在等待期间，外国投资者不可进行投资，如果发现投资属于受限制范围，就需要作出修改，甚或可能被拒绝。

除了FEFTA的这些限制之外，监管某些行业或业务的法规也可能限制外资在从事这些行业或业务的公司中的所有权。限制的范围取决于业务的性质。例如，根据《民用航空法》，如果外资对空运业务的投资会导致经营该业务的公司有三分之一或以上的投票权直接或间接被外国人或外国公司拥有，则该项交易可被有关主管部门拒绝。其他法律，例如《广播法》，分别对有关的行业设置了类似限制。在计划收购日本公司的股份时，必须要查核FEFTA以及管辖该公司业务的任何特别法律。

3. 哪个机构负责竞争审查? 什么情况下必须报告? 并购控制程序是怎样的 (包括是否在成交前或成交后控制)?

日本公平交易委员会 (JFTC) 负责处理与《禁止私人垄断及确保公平交易法》有关的事项。对于大多数形式的兼并和收购而言, 如果超过某些界限 (例如, 按所涉公司的国内销售收入额计算), 须经JFTC审查, 并自申报日起等待30日。在等待期间, 收购方不得收购或持有目标公司的股份, 如果交易被认为会实质性地遏制任何个别贸易领域里的竞争, 则会被禁止。

4. 是否存在任何特别的程序会拦阻外国投资 (例如需要工会的同意)?

株式会社的法规可规定, 从现有股东收购株式会社股份前要先经过董事会批准, 在少数情况下, 还须经过其他股东的批准, 股份才可转让给收购人。没有法规或监管规定要求投资必须取得工会、员工代表、行业组织或其他第三方的同意。

5. 对外国投资者增资或撤资有什么审批要求吗?

外国投资者在日本投资一般不需要监管部门的批准。

但是, 外国投资者增加某项业务的投资时, 某些根据FEFTA须预审批的交易要按首次投资一样进行事前申报, 不过由于监管部门已经批准过首次投资, 所以等待期可能较短。其他交易可能需要通过日本银行向有关主管部门提交事后报告。如果增加投资后外国持股份额超过所有权限制 (见第三节2), 超出限额的投资会被拒绝。

至于撤资, 外国投资者可能须通过日本银行提交事后报告。对外国投资者现有企业股权的收购也可能受到本节所述的限制。

第四节：税收及补助

1. 有没有一些税务结构或有利的中间税务管辖区, 是对外商直接投资日本尤其有用的?

不存在对外国直接投资日本特别有用的具体结构或优惠中间税务司法管辖区。然而, 通过例如新加坡或香港这类与日本有优惠税务协定的地方所设的关联公司向日本投资是值得考虑的。

2. 企业所得税和股息预提税的适用税率是多少?

在日本, 实行的法人税率约32%, 亏损在一定条件下可向后期结转。在日本支付的股息, 预提税税率一般是20.42%。

如果非居民个人或外国法人在日本有常设机构, 而且股息所得归属于该常设机构, 股息的预提税税率是20.42%, 日本非居民个人的所得总额 (包括股息) 须缴纳个人所得税或法人税。对于有常设机构的日本非居民个人, 如果股息归属于该常设机构的, 则不适用税务协定条款。

如果日本非居民在日本没有常设机构, 或者有常设机构但股息所得不归属于该常设机构的, 则股息须缴纳20.42%预提税, 除非适用的税务协定有不同规定。除预提税之外, 此类股息支付无须缴纳其他日本税项 (见第四节5: 日本-中国税务协定)。

3. 政府是否有实施任何外国直接投资税务激励计划?

为便利对日投资, 国家和地方政府提供各种税务激励, 例如设立特区。在东京有两种提供税务优惠的特区: 国家战略特

“

[日本 - 中国税务协定] 将股息、利息和特许权使用费的 预提税率减至10%

”

区和亚洲总部特区。东京以外有其他特区。

在特区直接从事被有关国家战略特区大臣认可的业务的公司, 在符合若干条件的前提下, 可享受应纳税所得额扣减20%、投资税额扣除或加速折旧。

外国公司在东京亚洲总部特区成立新的本地子公司作为亚洲地区总部或研究开发中心, 在符合若干条件的前提下, 可享受国税和都税减免, 例如投资税额扣除、加速折旧和不动产取得税 (房屋) 或固定资产税 (房屋和可折旧资产) 全额减免。

外国对日直接投资还享受其他一般性的税务激励。

4. 除了税务之外, 政府对投资者还提供其他财务支持吗? 如有, 请加以概述。

日本国家和地方政府都提供各种补助来鼓励投资。例如, 日本贸易振兴机构提供全球创新中心补助计划, 外国公司在日本设立创新中心或与当地公司和组织合作开展再生医学或物联网方面实验性和可行性研究, 其某些开支可获得该计划补助。

东京都政府对于在亚洲总部特区内新设立亚洲地区总部或研发中心的外国公司提供一部分费用补助, 例如人员聘用费用。

外国对日直接投资在一些条件下还可获得其他补助。

5. 日本与中国之间是否有任何互惠税务安排? 如有, 这些安排如何帮助投资者?

在日本-中国税务协定下, 可以采取一些措施避免双重征税。例如, 协定将股息、利息和特许权使用费的预提税率减至10%。

第五节：外汇管制及本地经营

1. 有什么外币或外汇限制是外国投资者需要注意的?

从日本向中国汇款受FEFTA监管。

如果汇款的目的是在外国进行特定的业务, 例如渔业或皮革或皮革产品制造, 汇款须经财务省许可。除非符合例外条件, 汇出日本超过三千万日元 (人民币191万元) 的, 须向财务省提交事后报告,

2. 对输入外国劳工有什么法律限制? 在操作上外国投资者为股东代表、高级经理和员工取得外国员工签证有多困难?

外国公民要在日本工作, 必须取得适当类别的在留资格认定证明书和签证, 这一般需时一至三个月。外国公民要访问日本, 必须取得签证, 符合免签证条件的除外。访问签证允许逗留最多90日。中国公民不适用免签证计划, 因此须办理签证才可访问日本; 签证类别取决于来访性质和计划中的活动。短期签证允许持签证人为将来的投资在日本进行市场调查和其他活

动，但不可受雇工作。其他签证会指定持签证人可从事活动的性质。

为参加股东会议或参观工厂这类短期访问办理签证并不困难。要取得工作签证，申请人则须证明有在日本工作的需要，而且具备适当的资格以及自给条件。

如果申请人患有列明的严重疾病或曾犯过某种刑事罪行，其签证申请会被拒绝。

作者简历

野崎竜一



野崎竜一律师自2007年起担任渥美坂井律师事务所合伙人，自2015年1月起担任该所伦敦办事处负责人。他的主要业务领域包括银行、结构性融资、金融监管、金融技术、并购、投资基金和数据保护。

野崎竜一律师拥有庆应义塾大学法律学位和波士顿大学法学硕士学位。2000年获得日本律师(辩护士)资格认许，2007年至2008年期间任职于美亚博国际律师事务所伦敦办事处。

大桥君平



大桥君平顾问律师于2016年1月加入渥美坂井律师事务所，他在知识产权法、商法、商业重整和破产法等领域经验丰富。

大桥君平律师拥有东京大学法律学位和哥伦比亚大学法学硕士学位，2002年获得日本律师(辩护士)资格认许。

西胁英司



西胁英司律师是渥美坂井律师事务所资深律师，主要业务领域为银行业和金融、房地产和一般公司法业务，他在处理复杂的房地产和其他投资交易方面经验丰富。

西胁英司律师拥有早稻田大学社会科学学士学位和南加州大学古尔德法学院法律硕士学位，2005年获得日本律师(辩护士)资格认许。

3. 购置商业物业有什么规定和程序？

如果非居民从居民取得不动产或有关不动产的任何权利，除非符合某些例外条件，FEFTA要求在取得不动产后20日内向财务省提供交易的事后报告。除FEFTA以外，没有其他国家法律会实质限制外国人拥有不动产，不过一些地方法规会要求提交事后申报。

第六节：争议解决

1. 日本是否有和中国或其他地方签订关于投资日本常用的双边投资保护协定？

《日本国政府、大韩民国政府及中华人民共和国政府关于促进、便利和保护投资的协定》(三边投资协议)于2014年5月17日开始生效，促进了政府透明度和投资保护，包括关于投资者国民待遇、有关投资的款项转移(例如利润、财产收益、股息和合同下的支付)、知识产权和争议解决的条款。各方之间解释或适用三边投资协议时产生的争议可以提交仲裁。

2. 当地法院的执行和争议解决程序的效率如何？有什么特别的程序是外国投资者必须注意的？

日本在文化上厌恶诉讼，只要有可能，当事人都会宁可在法庭外解决争议。即使争议被诉上法庭，法官也尽量协助当事人和解。

日本的诉讼程序没有普通法司法管辖地的那种证据开示制度。当事人在需要时才向法庭申请提供文件和证据。也没有单次庭审，庭审是随着请求的提出分别进行的。这些因素可能导致案件漫漫无了期，因而在本质上鼓励和解。赢得判决的一方并非自动有权从败诉方获得诉讼费补偿，而且，虽然法庭可命令败诉方支付胜诉方的诉讼费用，但这一般不包括律师费。

在法庭上提交的文件和请求/答辩必须采用日文；虽然如此，由于上述的其他因素，日方与外方之间的投资协议常常采用英文，由第三方法律(通常是英国法或纽约州法)管辖，并且可以提交仲裁，仲裁地一般选在“中立”的地点，例如伦敦或新加坡。

3. 当地法院尊重外国判决吗？可执行国际仲裁裁决吗？

外国法庭作出的判决一般可以在日本法庭执行，只要符合对等原则和某些程序上的要求。不过，日本法庭的判决不可以在中国执行，因为没有对等关系，所以中国法庭的判决也不能在日本执行。

海外作出的仲裁裁决可根据《承认及执行外国仲裁裁决公约(1958年纽约)》在日本执行，只要裁决是在公约成员国作出的，包括中国。执行这类仲裁裁决的法庭程序可能需要数月时间。