

India Japan Business Leaders Forum (IJBLF)

Status on Industry Issues highlighted at the Forum meeting held on 11th November 2016 in Tokyo

Keidanren
Policy & Action



Confederation of Indian Industry

Issues Faced by Indian Companies Operating in Japan

Issues which have been resolved

- Further ease issuing multiple business visas including further simplification and rationalization of visa issuing process in the two countries including reduction of documents required, etc.

[Resolved]

- Early enactment of bilateral social security agreement.

[The formalities for enacting the India-Japan Social Security Agreement have been completed and the Agreement came into force on October 1, 2016]

- Periodical holding of Sub-Committee on Improvement of the Business Environment, established under CEPA framework.

[The Sub-Committee on Improvement of the Business Environment met on July 27, 2016 – after a long gap]

Issues Partially Resolved

- Lift the ban on 17 food additives which are registered in India, reducing the cost of certification by Japanese agencies and relaxing the maximum residue levels of Ethoxyquin on various products.

[Maximum residue levels of Ethoxyquin Relaxed and received recognition from Indian government.]

Pending Issues

- **Remove non-tariff barriers.**

[Ongoing]

- **Develop mechanisms to streamline testing, inspection, and record-keeping procedures for the export of food, especially seafood, from India to Japan.**

[Ongoing]

- **Mutual Recognition Agreement (MRA) in pharmaceutical sector should be concluded.**

This would enable both the countries to identify the testing procedures and standards used in the other country for their goods.

Generic pharmaceuticals constitute 12 per cent of the total Japanese market. Japan offers national treatment to Indian generic pharmaceuticals under CEPA, so the substitution potential is high. A Mutual Recognition Agreement (MRA) is needed, enabling both countries to identify the testing procedures and standards used in the other country for their goods. The complex registration process and language barrier in the Japanese market also hamper Indian exports.

[Japan has shortened length of time required for screening and testing for all companies across the world. It is suggested that PMDA (Pharmaceuticals and Medical Device Agency) and DCGI (Drug Control General India) should collaborate more closely on regulatory matters. Workshops on compliance expectations of PMDA would be useful to conduct for the Indian pharmaceutical sector.]

- **Facilitate improvement in movement of natural persons in such areas as relaxation of academic qualifications criteria in issuing visas for computer engineers.**

Indian industry enjoys a vast pool of skilled service providers across a range of sectors including IT, accounting, financial services, infrastructure-related services, legal, retail, telecommunications, tourism and health services. Japan may consider dismantling barriers such as economic needs tests and discipline domestic regulations, especially where qualification requirements and procedures are concerned. Japan too has requested easier access for its professionals in India.

In addition, the need for an original invitation letter to process a business visa for Japan should be relaxed for Tier 1 companies.

[This issue needs to be discussed at the IJCEPA Sub-committee on Improvement of the Business Environment and resolved appropriately.]

Business Visas have been relaxed]

- **Realize market access in fields such as IT, IT Enabled Services, and professional services.**

India's vibrant software services industry faces challenges while operating in Japan due to lack of outsourcing culture, complex procedures for contract qualifications for overseas companies, and the time taken to close a deal. Japanese companies often do not follow standard Software Development Life-Cycle (SDLC) and require high level of customization which involves high costs. There is a need to promote facilitative contract procedures which could enable greater participation of Indian companies in the Japanese software market.

[This issue needs to be discussed at the IJCEPA Sub-committee on Improvement of the Business Environment and resolved appropriately.]

- **Introduce mutual recognition agreement on services professionals such as lawyers and accountants when called for by Japanese clients.**

[This issue needs to be discussed at the IJCEPA Sub-committee on Improvement of the Business Environment and resolved appropriately.]

- **The Withholding Tax of 10% on dividend, royalty and technical service fees should be eliminated.**

As per domestic law in Japan, there is no with-holding tax on payments by Japanese companies to non–resident entities towards service fees. However, as per DTA between Japan and India, 10% With-holding Tax applies on fees for technical services when Japan pays India.

As per normal convention, provisions of Treaty or Domestic Law whichever is beneficial is applied. However in case of Japan, the position that the Japanese government has taken is that the DTA treaty over-rides the domestic law. Thus the less beneficial option for the tax payer has been implemented. Hence it is recommended to abide by the domestic law or alter the DTA.

[This issue needs to be discussed at the IJCEPA Sub-committee on Improvement of the Business Environment and resolved appropriately.]

Issues Faced by Japanese Companies Operating in India

Issues that have seen improvement

- Effectuate the India-Japan Social Security Agreement
 - Company representatives and other such employed persons temporarily dispatched from a company, etc. to the other country formerly faced two problems: having to make duplicate payments of social insurance premiums due to the obligation to enroll in the pension systems of both Japan and India, and being unable to receive pension payments due to their period of being enrolled in the other country's pension system not fulfilling the period required for receiving pensions (10 years in India, 25 years in Japan). With the India-Japan Social Security Agreement coming into effect in October 2016, temporarily-dispatched employees dispatched for periods of five years or less will in principle only be enrolled in the pension system of the country from which they are dispatched, and are now able to establish the right to receive pension in each country by totalling the periods for which they were insured in both countries.

- Relax regulations on foreign investment (restrictions on investments in real estate and retail)
 - In the field of real estate, two prerequisites for land development and building construction projects for which 100% foreign investment is permitted (projects related to townships, urban and regional infrastructure, housing, commercial facilities, hotels, hospitals, roads/bridges, educational institutions, resorts, and recreational facilities) have been abolished. The prerequisites that have been abolished are: 1) bringing the minimum investment (five million dollars) into India within six months of launching the project, and 2) ensuring that in construction projects developments have a floor space of at least 20,000 square meters.
 - In the field of retail, single-brand retailers are now able to pursue retail sales and e-commerce sales without government approval, regardless of the percentage of investment. In addition, regulations for single-brand retailers on the procurement of domestic products have also been relaxed for cases in which the percentage of foreign

investment is over 51%. (At least 30% of the value of goods purchased must come from suppliers within India, but this procurement requirement can be met “as an average of the total value of the goods purchased” for the initial five years from launching the business, and on an annual basis thereafter, and the timing from which the requirement applies has been changed from “April 1 of the year of investment” to the “time of the opening of the first store.”

- Enact the Insolvency and Bankruptcy Code
 - It has formerly been said to be difficult to pursue insolvency proceedings smoothly and promptly in India, as it lacked the legislation prescribing insolvency proceedings. Aimed at facilitating and expediting, etc. insolvency processes, the Insolvency and Bankruptcy Code, 2016 (effectuated in August 2016) prescribes the insolvency resolution process period as 180 days, with just one extension of 90 days (a maximum total of 270 days).

- Improve access roads for the Chennai industrial district area and port
 - The roads from Chennai SEZ to Ennore Port have been expanded and improved, allowing for the reduction of time required to transport goods and for the maintenance of quality through the decrease in shaking during transport.

Items that have been partially improved/for which further improvements are sought

- Hold regular meetings of the “Sub-Committee on Improvement of the Business Environment”
 - A meeting of the “Sub-Committee on Improvement of the Business Environment,” a committee which was established on the basis of the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA; effectuated in 2011), was held in July this year, around four years since the first meeting in October 2012. In the future, meetings should be held regularly each year in a format that allows for the participation of Japanese and Indian private sector.

- Introduce the Goods and Services Tax
 - A bill for revision of the constitution to allow for the introduction of the Goods and

Services Tax (GST) was passed by the upper and lower houses in August 2016. While the Indian government is aiming to ensure that the GST is introduced in April 2017, in addition to the fact that it must be passed by both the national parliament and state assemblies, which requires approval from the majority of state assemblies (15 states of a total of 29), the rate of the GST itself is also undecided. It should be ensured that the system is appropriately designed from the perspective of allowing reduction in the tax payment burdens on business operators, and simplifying and ensuring the transparency, etc. of procedures, and that it is promptly and smoothly introduced.

- Accept inspection data for electrical and electronic products by a method stipulated by the International Electrotechnical Commission (IEC)
 - CB Reports (compatibility certificates detailing the results of safety tests conducted on electric goods in accordance with IEC standards) are currently used in India for only some electrical products. It is necessary to also permit the use of data from CB Reports for secondary batteries and other such products that are subject to the Compulsory Registration Order scheme, as these products are currently subject to mandatory tests at designated institutions within India, and these tests/inspections require long periods of time in comparison with other countries due to factors such as the lack of capacity of the testing institutions and sudden halts in operations. Particularly in the case of secondary batteries, tests require long periods of time in India.

- Facilitate the acquisition of multiple business/employment visas and simplify procedures, including reducing required documents
 - While the maximum term of validity for multiple business visas was extended to ten years in June 2016, it is noted that there are currently issues such as the fact that business visas for business travellers are issued for periods of only one year. As there are also problems such as the fact that for applications for employment visas, procedures to register foreigners after they have relocated to start a new post, and procedures to renew registrations, the accompanying documents required differ according to the person in charge, efforts should be made to ensure greater speed and transparency in procedures, including reducing and simplifying accompanying documents.

Items for which improvements are required

- Revise the Land Acquisition Act
 - Land acquisition is not progressing, due to the fact that the existing Land Acquisition Act prescribes the obligations to obtain the consent of 70–80% of land owners and to carry out a social impact assessment study. The Modi government has taken steps to put into effect a bill to amend the Land Acquisition Act to facilitate acquisition, by issuing a presidential decree (in the event that legislation is required while the national parliament is not in session, the president may issue a decree in accordance with the requests from the Cabinet). Efforts should be made to promptly enact the Land Acquisition bill from the point of view of ensuring the stability of the system.

- Regulate/rationalize tax systems and secure international conformity (transfer pricing taxation, service tax, dividend distribution tax, etc.)
 - Taxation of permanent establishments and transfer pricing taxation should be regulated and rationalized, as they are hindering the smooth operation of local subsidiaries due to their detachment from the actual conditions of business.
 - As the methods prescribed in the Black Money and Imposition of Tax Act for assessing foreign assets, etc. with respect to the treatment of overseas representative employees (an act prescribing the imposition of tax on undisclosed foreign income and assets) are unclear, improvements should be made to these provisions, including addressing whether, in view of the act's objectives, it is reasonable to make foreigners subject to the act.
 - When Indian companies decide their dividends, those dividends are taxed by around 20% in accordance with the dividend distribution tax. As this tax system does not exist outside of India, it should be changed to dividend withholding tax.
 - Prompt solutions shall be pursued regarding the imposition of minimum alternate tax in SEZs and the imposition of service tax on land lease fees in the Neemrana industrial area.
 - In the National Capital Territory of Delhi diesel automobiles must pay an additional 1% environmental tax, in accordance with a decision by the Supreme Court. This regulation

should be abolished.

- Ensure the fairness, transparency, and foreseeability of administrative procedures through the enactment of an Administrative Procedure Act that determines common items related to procedures by administrative bodies regarding dispositions, etc. and for formulating ordinances, etc.
 - An “Administrative Procedure Act” should be established to cover items such as dispositions upon applications (establishing and publicly announcing review standards and standard processing periods, and disclosing reasons in the case of refusal, etc.), adverse dispositions (establishing and publishing disposition standards, hearings and other such advance procedures, etc.), notifications (effectuation, etc. in accordance with the principle of taking effect on arrival), and public comments (systems to publish proposals for governmental and ministerial ordinances, etc. in advance and gather a broad range of public opinions).

- Enact an “Act on General Rules for National Taxes” that determines procedures concerning tax administration and improve taxation procedures through the enactment of similar state laws
 - In order to ensure the fair operation and optimization of tax administration, an “Act on General Rules for National Taxes” that determines procedures regarding tax administration, such as decision of tax obligations, periods of taxation and collection, procedures for returns, limitations on periods for correction and decision, etc., and complaint reviews, etc., should be enacted, and similar state laws should also be enacted.

- Encourage infrastructure development and reform tendering systems
 - In order to ensure that more companies from Japan and other foreign countries enter infrastructure business, tendering (bidding) systems shall be reformed with the aim of promoting the implementation of high-quality infrastructure development. These reforms shall include the introduction/promotion of the expanded use of a comprehensive evaluation system in tendering processes, the rationalization and optimization of risk/role division between the public and the private sector such as the granting of

government guarantees in PPPs, and ensuring that calls for tenders are for complete projects, rather than splitting tenders by field or phase.

- Rationalize the application of intellectual property rights legislation and ensure international conformity
 - According to the provisions related to compulsory licenses set out in Articles 83–94 of the 2002 Indian Patents Act, after the expiration of three years from the date of the sealing of a patent, any person interested may apply to the Controller General of Patents for the grant of a compulsory license on any of the following three grounds: (1) reasonable requirements of the public with respect to the patented invention have not been satisfied (e.g. whether or not sufficient medicine to reach all patients across India is being sold), (2) the patented invention is not available to the public at a reasonably affordable prices (e.g. whether or not it is being sold at a price that is accessible to the Indian general public), (3) the patented invention is not being implemented in the territory of India. (e.g. whether or not it is manufactured within India). However, as the frequency with which compulsory licenses are granted may diminish willingness to invest in India, the Indian government shall review said system.
 - According to the provisions of Article 8 of the Indian Patents Act, when filing a patent application in India it is necessary to submit information on foreign applications to the Indian Patent Office, and when this provision is violated the patent may be revoked. As this system does not exist outside of India, the obligation to submit such information should be abolished. Article 146 of the Patents Act also prescribes that patent holders are obliged to submit statements to the Patent Office, in principle once a year, regarding the extent to which the patented invention has been worked. This condition should also be abolished as it leads to a significant burden on patent holders and licensees, due to the fact that the content of said statements are sometimes used by the Patent Office as evidence on which to base their decision regarding whether it is right or wrong to establish compulsory licenses.
 - After an applicant submits a patent application, they are requested by the reviewer to resubmit all application information they provided at the time of the application. The Indian government is encouraging electronic applications, and all information including that from paper applications submitted from 2012 onward has been digitized and

registered in the system. As reviewers are able to access this data when necessary, they should not request the applicant to resubmit the information in writing.

- The Indian government has been pursuing efforts to speed up the review of patents since 2011, and the review period has since been shortened to three to five years. However, in the case of applications before 2010, some applicants have waited over five years for the issue of patent registration certificates. This delay should be promptly resolved.
- The utility model system that the Patent Office has been considering introducing since 2011 should not be introduced under the principle of registrations without examination. A careful system design and appropriate operation structure should be developed with regard to clarifying subjects for protection, ensuring that prerequisites are tightened, clarifying the obligations of the rights holder when exercising their rights, and simplifying searches, etc.

- Rationalize the procurement of funds and secure international conformity

- Short-term financing for facilitating business activities (procurement) is an important means of raising capital, and in India foreign commercial loans are one of the most effective means. However, according to the regulations of the Reserve Bank of India, funds procured in foreign currency are subject to minimum loan periods of at least three years for loans under 50 million dollars, and at least five years for loans over 50 million dollars, and there is also a mandatory prerequisite of 100% foreign exchange risk hedging. Such regulations should be reviewed.
- Moreover, in the event that group companies have shareholders or directors in common, the flexibility of financing through loaning and borrowing between those companies is regulated under the group loan regulation. This regulation should be reviewed.

- Enhance the functions of the Japan Plus

- The Japan Plus team was established in the Indian Ministry of Commerce and Industry in October 2014 as the “single window for promoting investment from Japan.” In addition to this, a “core group,” chaired by the cabinet secretary, consisting of secretaries of ministries including the Ministry of Commerce and Industry, Ministry of

Finance, Ministry of External Affairs, Ministry of Railways, Ministry of Urban Development, and Ministry of Electronics and Information Technology, has been established to address matters proposed by Japan Plus, pursue the cooperation of related ministries and agencies, and monitor the processes of approving investment, etc., and these will allow for progress in solving issues and the further enhancement of functions.

- Relax regulations on multi-brand retail businesses
 - For retail businesses that handle multiple brands, foreign investment with a ceiling of 51% is currently permitted, provided the consent of the state government has been granted. In addition to reviewing the ceiling on foreign investment, efforts should be made to relax the conditions on such investments, such as the following:
 - Investments must be at least 100 million dollars.
 - At least 50% of the foreign direct investment must be spent on infrastructure development other than land purchase and rental costs (development of infrastructure for production, packaging, distribution, and storehouses, etc.) within three years of the first investment.
 - 30% of the value of goods purchased must come from Indian small industries (industries that have a total investment in plants and machinery of not more than two million dollars). This requirement can be met as an average of the total value of the goods purchased for the initial five years from launching the business, but must be fulfilled on an annual basis thereafter. Moreover, the timing from which the requirement applies has been changed from “April 1 of the year of investment” to the “time of the opening of the first store.”
 - Conditions concerning stores include establishing stores in cities with populations of at least one million people in the 2011 national census or in cities decided by the relevant state government.
 - The following thirteen states/union territories currently allow entry of general merchandise businesses into the following markets: Andhra Pradesh, Assam, Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Maharashtra, Manipur, Rajasthan, and Uttarakhand, Daman and Diu, and Dadra and Nagar Haveli.

- Conclude the Japan-India agreement on civil nuclear energy cooperation
 - During Prime Minister Abe's visit to India in December 2015 a consensus was reached on the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the governments of Japan and India. The agreement will be signed following the finalization of technical details, including details related to the necessary domestic procedures, and efforts should be made to ensure this is achieved promptly.

- Review of Paragraph 1 of Article 135 of the 2013 Companies Act (CSR clause)
 - Paragraph 1 of Article 135 of the 2013 Companies Act prescribes that every company that has either a net worth of 5 billion rupees or more, a turnover of 10 billion rupees or more, or a net profit of 50 million rupees or more shall establish a Corporate Social Responsibility (CSR) Committee consisting of three or more directors, as a committee to determine CSR policy, that said committee shall report to the board of directors, and that the company shall spend the equivalent of at least 2% of its average pre-tax net profits for the three immediately preceding fiscal years on the pursuit of CSR activities.
 - This clause should be abolished, as while in Europe and the US, etc. there are examples of support being provided through tax systems to encourage company donations and CSR expenditure in countries such as the US, UK, and Eastern European nations, there are no examples in such countries of CSR expenditure being enforced through corporate law, which concerns the fundamentals of corporate governance.

- Relax regulations on banks regarding priority sector lending
 - The guidelines by the Ministry of Commerce and Industry in India prescribe that for investments in banking, investments of up to 49% are automatically approved and investment of between 49% and 74% are permitted under prior authorization from the government.
 - With the announcement of the "Framework for setting up of Wholly Owned Subsidiaries by Foreign Banks in India" in 2013, the Reserve Bank of India approved the establishment of 100% subsidiaries of foreign banks. Regulation regarding the establishment of branches in India will be liberalized in the case of existing foreign bank branches converting into 100% subsidiaries using said framework.

- However, the Reserve Bank of India has issued a master circular and notification to enhance lending in priority sectors such as agricultural areas and small and medium-sized companies, which prescribes the targets for priority sector lending as 33% for Indian domestic private sector banks, and 40% for the aforementioned 100% subsidiaries of foreign banks established using the aforementioned framework. These should be revised.

- Expand the use of the Universal ID system
 - The Japan-India Joint Working Group on ICT has been held since February 2014, by representatives of Indian Ministry of Electronics and Information Technology and the Japanese Ministry of Internal Affairs and Communications, along with participants from Japanese companies. As part of its deliberations, the group is discussing the “Universal ID (UID) Application Platform Project” as a means of using ICT to solve social issues.
 - In said group, Japanese and Indian public and private sector representatives shall continue to cooperate in efforts to expand the use of the Indian UID system introduced to reform the Indian social security system.

- Securing the international conformity of regulations on plastic waste
 - Plastic materials used for packaging electronic/electrical products must be pre-registered and must display registration numbers, and it is necessary for the material to be thicker than normal. Efforts should be made toward abolishing these regulations or seeking to ensure that they are consistent with standards in Europe and the US, etc.