

India Japan Business Leaders Forum (IJBLF)

*Industry Issues highlighted at the Forum meeting
held on 14 September, 2017 at Gandhinagar, Gujarat*

Keidanren
Policy & Action



Confederation of Indian Industry

Issues Faced by Indian Companies Operating in Japan

Issues Resolved

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

As per the relaxed visa norms, according to Japan authorities, eligibility for multiple-entry visas has been expanded to include people with travel records to Japan for short-term visit in the past three years and those with travel records as temporary visitor to any other G7 countries. The validity of visas for business purposes and also for "cultural and intellectual figures" has been extended from 5 to 10 years. Japan had introduced multiple-entry visas for Indian nationals in July 2014 as an acknowledgement that strengthening people-to-people exchanges was important to broaden its relationship with India.

India provides "eVisa" and "Visa on Arrival" to Japanese nationals. Japan is the only country India has given "Visa on Arrival" facility. India also issue a 10-year visa to selected and prominent Japanese businessmen. All these visa systems are online to facilitate easy service. It is suggested that the Japanese side should consider a reciprocal arrangement of "eVisas" or Visa on Arrival. In addition a 10 year multiple entry business visa could also be considered.

- **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 has been meeting in the past couple of years on an annual basis, last meeting was held on July 31, 2017]

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 Japan has recently notified the residue limit for ethoxyquin at 0.2 ppm (parts per million) for shrimps imported from India against the earlier 0.01 ppm.]

- **Convene regular meetings of all the Sub-committees under the India – Japan CEPA**

In addition to the Sub-Committee on Improvement of the Business Environment, there is a need to regularly convene other institutional mechanisms under the India – Japan CEPA. These include the Sub-committee on the Rules of Origin, the Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures and SPS Measures, Sub-Committee on Trade in Services, Sub-Committee on Cooperation and Sub-Committee on Movement of Natural Persons.

[Some of these committees have met recently.]

Pending Issues

A) Cross-cutting issues

- **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.]

- **Mutual Recognition Agreement (MRA) in terms of organic products should be concluded.**

India exported organic foods worth 298 million USD in 2015-16. Organic products are exported to markets such as the European Union, US, Canada, Switzerland, Korea, Australia, New Zealand, South East Asian countries, Middle East, South Africa etc. However, India's exports of organic products to Japan has been restricted as there is no reciprocal arrangement for certification between India and Japan.

[It is suggested that the Japan and India should conclude a Mutual Recognition Agreement which recognises certification issued by the Food Safety and Standards Authority of India under India's National Programme for Organic Production and Japanese Agricultural Standards (JAS).]

- **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 for services professionals such as lawyers, accountants, nurses and midwives.**

[Ongoing]

- **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.]

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

India loses a huge opportunity due to the barriers in the food industry especially in cases such as seafood, sesame seeds, mangoes, pomegranates, apples and pears. India has a competitive advantage in these products for which there is a strong demand in Japan. Despite signing the Free Trade Agreement in 2011 and the existence of the CEPA since 2007, there has been no decisive outcome in these factors.

In the case of seafood, it has been observed that antibiotic usage was detected in the case of farmed marine products. As a result, Japan has subsequently banned the import of all marine products from India. It is suggested that the ban be restricted to farmed marine products rather than on the entire range of marine product including wild sea catch.

In the case of export of surmai fish, the use of an imported preservative has led to the fish losing tariff benefits under CEPA. For one variety of Surmai, there is no CEPA concession while for another variety, the CEPA tariff is 1.9 per cent against an MFN tariff of 3.5 per cent. Exporters are not able to use the concession for latter since they use an imported preservative and the rules of origin require it to be a wholly obtained product. This seems a legitimate case for a suitable interpretation of ROO by both sides since the preservative accounts for a minute share of value of the product.

[Ongoing]

- **Air Connectivity**

There is a need to increase the number of direct flights between major cities in India such as Bangalore, Pune, Hyderabad, Chennai and Cochin and key cities in Japan. With the Open Skies Agreement in place, this should now be possible.

- **School Education**

Limited number of international schools in Japan is making it difficult for employees in India to work in Japan for long-term assignments, especially when onsite postings are required at remote locations outside of major cities in Japan.

- **Dispatch Law**

Changes in Dispatch law (Haken law) of eliminating the specified worker dispatch license is has led to all service providers get the general worker dispatch license, which is designed for staffing companies. In an onsite-offshore model, Indian companies often dispatch workers to on site to manage the offshore resources on behalf of the customer and to continue with this type of service, Indian companies will now need to get the general dispatch license.

- **Economic Partnership Agreement (EPA) Certificate**

EPA certificate is the basic requirement for availing the concessional Customs Duty benefits in respect of import from Japan. There has been reluctance on the part of Japanese suppliers to provide the certificate to Indian buyers. The procedure for obtaining the certificate is very cumbersome and a long drawn process and therefore in many cases, Indian importers are not able to avail the benefits envisaged under the CEPA.

The above issue becomes more acute in respect of cases where the Japanese supplier procures the material from other Japanese suppliers for export to India, the EPA certificate is not made available at all citing the inability to obtain the EPA certificate. We are hardly able to avail any benefit under such cases.

- **Rules of Origin (ROO)**

A major challenge for an exporter is to fully comply with the various applicable rules and provisions under CEPA for a particular product. Similar challenge exists at level of the regulatory authorities also to ensure that imported goods under CEPA are in consonance with the applicable rules and provisions.

The Rules of Origin need to be suitably simplified and amended with regard to marine products from India (shrimps, mackerel, surimi fish, etc.) as well as for chemicals

In addition, there should also be Self-certification of Goods as under the EU Generalised Scheme of Preferences (GSP) for getting CEPA benefits, since both India and Japan are parties to “Trade Facilitation Agreement” under WTO. This will help reduce trade procedures.

B) Sectoral Issues

● Pharmaceutical Sector

Lack of Innovation Premium: In pharma sector, the potential for bilateral cooperation is immense as the market in Japan is very large. For companies producing biosimilars in Japan, no innovation premium is being awarded. The company producing biosimilars not only has to invest in clinical trials but also has to prove similarity to an existing product. This leaves the company in an unfair position. As R&D is vital to pharma companies, they will be more inclined to invest in countries which provide incentives in this regard. For example, Malaysia provides a grant to pharma companies to invest in R&D

Pricing of Biosimilars: Japan currently caps the price of biosimilars at 70% of the National Health Insurance (NHI) price for innovator drugs. It is suggested that the differential pricing for any player after the patent expires on the innovator drug should be done away with.

Instead of imposing price caps, the regulator should allow a market-driven pricing for both biosimilar and innovator. For example, pricing discounts for biosimilars have been 25-30% seen in EU5 countries. In Nordic countries, where governments have promoted the use of biosimilars, the market has witnessed much steeper discounts compared to either EU5 or Eastern Europe. This is an outcome of government tenders with guaranteed volumes and physicians’ willingness to switch patients from the branded biologics to biosimilars.

Annual Price Revisions: Mandatory price revisions may make generics unviable in the long term. It is suggested that there is a need to move to an annual price revision model vis-a-vis the current biennial repricing system which would further exacerbate the situation.

Tackling Language Barriers: Currently, the Pharmaceutical and Medical Devices Agency (PMDA) does not accept applications in languages other than Japanese. Japan's Pharmaceutical Affairs Law requires all forms related to the marketing application to be submitted in Japanese. Allowing Dossier/ Drug Master Files (DMF) submissions in English language will add significantly to the 'ease of doing business' in Japan and help Indian pharma companies extend the benefit of affordable generics and biosimilars to Japanese patients.

Filing of DMFs: Companies based in India (without a local Japan office) should be allowed to file DMFs directly with PMDA and also be allowed to be Marketing Authorisation Holders (MAH).

Simpler Registration: The lengthy and time consuming registration process coupled with a language barrier in Japan prevents pharma companies from directly investing into the country. Instead, they tie up with local drug manufacturers. A simpler registration process would enable greater FDI in Japan's pharma sector allowing the entry of new technologies.

- **Steel Industry**

Coking coal is a vital raw material in steel production, which accounts for around 25% of cost of production of steel. India and Japan meet their coking coal requirement primarily through imports. While India imports around 45 million tonnes of coking coal per annum, Japan imports around 75 million tonnes annually. The source of import is Australia, same for both the countries. Together the two countries control about 40% of global sea borne coking coal trade.

Over the last couple of years, the coking coal market has migrated to spot buying through index based pricing. As a result, Indian and Japanese buyers, have to bear the brunt of the high volatility in coking coal pricing and are forced to buy coking coal at extraordinary prices.

There is a need for Japanese and Indian steel companies to work together and put in place long-term supply agreements for supply of coking coal with Australia.

In addition, there is a need for the two countries to work together to correct the trade imbalance in the steel industry.

● **Travel and Tourism**

There is tremendous potential for collaboration in the Travel and tourism sector between Japan and India.

Japan received about 123,000 visitors from India in 2016, and about 50,000 tourists among them. In contrast, 1.13 million Indians visited the United States during the same period. On the flip side, in 2015, Japan contributed to 2.58% of Foreign Tourist Arrivals to India i.e. 2,07,415. This is a slight dip from the 2014 figure of 2,39,106. Therefore, there is a tremendous potential of expanding travel and tourism between Japan and India.

India-Japan tourism ties are expected to grow with as 2017 is the Japan- India Friendly exchange. The Japan National Tourism Organization (JNTO) President, Ryoich Matsuyama, listed four reasons why more Indians are expected to visit Japan – the diversity of the seasons, nature, culture, and cuisine. A series of commemorative events are planned across various parts of India and Japan like Japanese Culture Festival Kizuna, Buddhism in India- Japan Relations, International day of yoga, Namaste India and more.

Areas of cooperation

- The Buddhist circuit - which are a set of important locations where Lord Buddha had settled in his lifetime - should find favor with the Japanese as they are keen followers of Buddhism.
- Medical, wellness and Ayurveda were other areas which Japanese tourists would find endearing.
- It is necessary to expand the civil aviation network between Japan and India. Currently, Japan Airlines and All Nippon Airways operates 21 flights weekly and Air India operates 7 flights a week. Although, there are direct flights from Delhi and Mumbai to Japan, passengers from major metropolitan cities, such as Bengaluru, Hyderabad, Chennai and Kolkata mostly use in-direct flights to Japan via Singapore, Bangkok and Kuala Lumpur. Improvement in air-connectivity between major airports in India and Japan will create more air traffic options between the two countries. The recent adoption of an open sky policy between the two countries would go a long way in this regard.

Issues Faced by Japanese Companies Operating in India

Issues that have seen improvement and issues for which further improvements are sought

● Introduce Goods and Services Tax (GST)

- In India, there were more than 15 types of indirect taxes for each state, so for transactions that crossed state borders, the tax structure was very complicated, with these taxes being applied in multiple stages. In July 2017, however, these taxes were all converged into a national uniform GST. With the clarification of the tax rates for each product, there are expectations for the simplification of tax payment procedures, reduction in distribution costs, streamlining of logistics, and a lowering of the risk of tax suits. Once this system is established, it is expected that operations will become simpler and more efficient, and that the convenience for business will be improved dramatically.
- On the other hand, there are concerns that the transition from the old tax system to the GST will be accompanied by confusion in administrative processing and inadequate upgrading of the system, resulting in confusion and bottlenecks in sale and purchase transactions, as well as concerns about lack of understanding about the new system among officers in the field. The new system should be implemented steadily as there are cases in which the state border checkpoints, at which cargo was required to undergo inspections under the old tax system, are still operating. Also, companies are incurring additional costs due to the upgrading of their computer systems, so the frequency of changes to the new tax system should be kept to a minimum.
- With the three types of GST (central GST, state GST, and integrated GST), and large number of tax rate categories, such as the four basic tax rates (5%, 12%, 18%, 28%) to be adopted, and the requirement for tax return procedures to be taken for each state, further simplifications should be made.
- GST also applies to cargo for export, but internationally, it is common for export cargo to be exempted, so improvements should be made in this regard.
- A low tax rate (12%) has been set for electrical vehicles (EV), but for hybrid vehicles, the same high rate (43%) as for luxury vehicles has been applied, so there is concern that the penetration of HVs will stagnate.

- **Effectuate the nuclear cooperation agreement**

- The Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the Governments of Japan and India was signed in November 2016 and entered into force in July 2017. The realization of this agreement will enable the transfer of reactor vessels and other equipment and technologies related to nuclear energy from Japan. It is expected that this will help realize the construction of new nuclear power generation facilities through cooperation between India and Japan.

- **Abolish old high-value notes and introduction of new notes**

- In November 2016, it was announced that India's old 500-rupee and 1,000-rupee notes were to be scrapped, to be replaced with new 500-rupee and 2,000-rupee notes. Transitional measures were taken, such as depositing the old high-value notes into bank accounts and exchanging them for the new notes at bank tellers. On December 30, 2016, deposits of the old notes in bank accounts were closed. That same day, by Presidential decree, use of the old high-value notes was declared illegal. In the initial stage after the scrapping of the old notes, there was turmoil in the market caused by major shortages of circulating cash, but with these measures, the transparency of the currency has been secured, and tax evasion is being prevented and tax revenue is being increased with the inclusion of the cash-based informal sector and increased capture of black money. Further, led by the government, the use of cashless transactions (digital payments) is also being promoted, and further action should be taken toward small and medium enterprises and consumers, among whom the response to cashless transactions is lagging behind.

- **Establish Insolvency and Bankruptcy Code and NCLT**

- In India, liquidation proceedings for failed businesses had been taking an average of four years to complete, but multiple pieces of bankruptcy-related legislation, including the Sick Industrial Companies Act, 1985 (SICA), have been consolidated and amended into a new, single law, called The Insolvency and Bankruptcy Code, 2016. The introduction of a time limit for completing corporate rehabilitation proceedings (within 180 days of the commencement of proceedings, in principle), the establishment of the National Company Law Tribunal (NCLT), a specialized organization for carrying out

bankruptcy proceedings, and other measures under the new Code are expected to improve the fragility of India's legal framework for insolvency resolution, expedite the carrying out of insolvency proceedings, and accelerate solutions to the problem of the banks' non-performing loans.

- **Refund Employee Provident Fund due to India-Japan Social Security Agreement entering into force**

- With the India-Japan Social Security Agreement entering into force in October 2016, it is expected that double burden of social insurance premiums will be eliminated, leading to cost reductions. The refund scheme of Employees' Provident Funds has been organized, but there are still many unclear issues in the application process, and further action by the government should be taken.

- **Introduce Visa on Arrival Scheme**

- From April 2017, Japanese visitors to India who meet certain conditions, including the purpose of the visit (e.g. business, tourism, or medical treatment) and duration of visit (no more than 60 days), may be issued with a Visa on Arrival (VOA). This is expected to increase convenience, such as when making emergency visits to India.

- **Contract time limit on tax investigations of direct tax affairs**

- When Japanese companies that do not have a company in India have conducted business through a project office, even after the project has substantially ended, they have incurred costs for maintaining that office until the completion of tax investigations and deploying personnel to deal with the investigation. The contraction of the time limit on direct tax investigations (24 months from the last day of the business year from FY2018) is expected to result in cost reductions.

- **Improve business development environment for limited liability partnerships (LLP)**

- LLPs have the advantage of being exempt from the dividend distribution tax (DDT) and are able to be flexible in the establishment of their governance structures. In India, due to the designated partnership requirements when setting up a new LLP (obligation to select as a partner a person who has resided in India for at least 182 days of the

previous calendar year) and the restrictions on external commercial borrowings (ECB), there were few cases of this structure being adopted. In March 2017, however, the Foreign Exchange Management Act (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 were amended, and the clause on the residency requirements for designated partners and the clause stating the restrictions on ECB were deleted. It is expected that this will result in the improvement of the business environment for LLPs in India.

- **Amend Arbitration Act**

- Under the Arbitration and Conciliation (Amendment) Act, which came into force in January 2016, disputes must be concluded within 18 months, and payments for construction work that have been frozen for the purpose of arbitration may be released under certain conditions. It is expected that these measures will be implemented steadily.

- **Tighten regulations on automotive emissions**

- In April 2017, sales of Bharat Stage III (BS3) compliant motor vehicles ended, and by 2020, Bharat Stage VI (BS6), which is equivalent to the European emissions standard Euro 6 (maximums: 60 mg/km NOx for gasoline vehicles, and 80 mg/km of NOx and 5 mg/km of PM for diesel vehicles), will be introduced, and it is anticipated that a market for low-emissions vehicles will be developed. It is hoped that the government will undertake effective management to ensure that there is no confusion as a result of the introduction of BS6.

- **Develop Real Estate Development Market**

- In May 2017, additions were made to India's Real Estate (Regulation and Development) Act, requiring real estate developers and real estate projects of a certain size to be registered with the Real Estate Regulatory Authority (RERA). With this move, various information about real estate projects will be disclosed, which is anticipated to ensure the transparency of such projects.

- **Hold regular meetings of the “Sub-Committee on Improvement of the Business Environment”**

- The third meeting of “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), was held in July 2017. It is expected that meetings should be held regularly each year with the participation of the Japanese and Indian private sectors, and this will contribute to the improvement of the business environment.

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 an obligation to obtain the consent of 70–80% of land owners and to carry out a social impact assessment study. These obligations are causing delays in some large projects, including the development of the Chennai Bangalore Industrial Corridor (CBIC). It is hoped that a revised Land Acquisition Act for the facilitation of land acquisition will be enacted promptly.

- **Regulate/rationalize tax systems and secure international conformity**

- 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 deviation from the actual conditions of business.
- Bilateral advance pricing agreements (APA) will enable the avoidance of double taxation and the risk of penalties for the correction of transfer pricing, but because it takes time to negotiate and review such agreements, it is hoped that they can be expedited and made more efficient.
- The Black Money and Imposition of Tax Act requires overseas representative employees to disclose detailed information about overseas bank accounts. In view of the act’s objectives, only Indian nationals with overseas assets should be subject to the requirements of the Act.
- The Dividend Distribution Tax (DDT) is a tax that exists only in India that imposes a tax

of around 20% on dividends when they are decided by Indian companies. This should be changed to a dividend withholding tax.

- When a Japanese company receives a royalty from an Indian company, the Japanese company has an obligation to submit a tax return in India as a foreign company, and undergo a tax investigation every year. This imposes a large administrative burden, and improvements should be made.
- Despite the existence of past court precedents regarding tax collection, there are cases in which similar arguments and court proceedings with the Tax Office must be repeated. Tax Office should collect taxes based on precedents.
- With the exception of automobiles, tariffs on imported finished consumer goods are calculated based on a Maximum Retail Price label, but there are cases in which this is not being implemented properly. The price label scheme should be abolished and tariffs should be calculated on the basis of import prices.
- In cases where multiple companies form a consortium to pursue a large-scale project, under Association of Persons (AOP), the consortium's transactions, even those made outside India, could be determined to be subject to unified taxation. This presents a problem for foreign companies in terms of forming consortiums and participating in Indian projects, and such taxation should be abolished.
- Tariffs are imposed on ink cartridges and other products that are covered by the Information Technology Agreement (ITA) from July 2017. International agreement should be implemented and these tariffs should be abolished.

- **Encourage infrastructure development and reform tendering systems**

- In order to expand the participation of foreign companies in infrastructure projects, in addition to the rationalization of the pre-qualification system for participation in tenders, the introduction/promotion of the expanded use of a comprehensive evaluation system that evaluates not only the new capital investment prices but also lifecycle cost reductions and technologies appropriately should be made. The rationalization and optimization of the sharing of risks and roles between the public and private sector, such as the granting of government guarantees in PPPs, sanctioning of single-company tender, and ensuring that tenders are called for complete projects, rather than splitting tenders by field or phase, should also be made.

- There are cases in which, after a member company of the consortium has failed to perform an operation or obligation during the execution of a consortium-based project, based on the contract at the time of the tender and regardless of the division of roles contained in the scope of work (SOW), all of the companies in the consortium have been subjected to monetary and other penalties due to joint and several liability. This situation should be improved.

- **Relax financial regulations**

- Under Priority Sector Lending (PSL) regulations for the enhancement of lending to priority sectors such as agriculture and micro-enterprises, a market for Priority Sector Lending Certificates (PSLC) has been created. The value of trading on the PSLC market has increased and progress is being made in information disclosure, but commission rates should be reduced and improvements should be made to the system to allow foreign banks to participate in trading. There are also concerns about the potential for sector-based targets to be imposed on the PSL regulations.
- In India, external commercial borrowing (ECB) is an effective means of procuring finance. In amendments to the regulations in November 2015, the loan term for infrastructure-related projects was extended (average term of at least 10 years), and non-bank loans are to be made in Indian rupees. In regulatory amendments in March 2016, foreign currency-denominated loans of five years or more were allowed for infrastructure-related companies and infrastructure-related non-bank loans, but under the mandatory condition of 100% foreign-exchange risk hedging. A review of these regulations should be made.
- There are regulations that restrict the amount of credit extended to a single debtor based on the creditor's capital amount. This makes it difficult for the branches of foreign banks, which have smaller capital than local banks, to engage in large-value projects, so relaxation of these regulations should be made.
- Regarding the percentage of bank branches in large cities and small and medium cities, there is a regulation requiring that 50% of new branches opened in a year be established in cities with populations of no more than 100,000, and 25% in cities with populations of no more than 10,000. It is hoped that this regulation will be reviewed in the way that banks are able to receive the approval to open new branches more flexibly

and promptly based on their business model,. Also, regarding the need for prior approval to open new bank branches, while on the one hand, prior approval by the Reserve Bank of India (RBI) is not required by local banks or the subsidiaries of foreign banks as long as the above percentages are met, on the other hand, in cases in which foreign bank branches apply for approval, even if the above percentages are being met, prior approval by the RBI is required. Relaxation of this regulation should be made.

- **Rationalize the application of intellectual property rights legislation and ensure international conformity**

- India has a system that does not exist elsewhere, in which a report on the state of implementation of patented inventions is to be submitted (Form 27). While the necessity of submitting such reports is not clear, this system places a large burden on patent right holders, and it should be abolished.
- In cases where patent applicant apply same patent to India as well as other countries, the applicant is occasionally requested by the Indian reviewer to submit information regarding the patent application and the review status in other countries. For the countries and regions that reviewers are able to access such information on the digital system, they should not request the applicant to submit such information but access the system.
- The Indian government has been pursuing efforts to speed up the review of trademark applications, and the review period has been shortened. However, there are some trademark applications that were filed before 2010 that have not yet been issued with trademark registration certificates even five or more years after the filing. This backlog should be cleared promptly.
- For the utility model system that India has been considering introducing, the system should be designed carefully, including the clarification of the coverage of protection, and appropriate implementation structures should be established.

- **Relax regulations on foreign investment (restrictions on investment in the retail industry)**

- Single-brand retailers are able to pursue retail sales without government approval for foreign investments of up to 49%, and 100% with government approval. However, in

cases where the percentage of foreign capital is 51% or more, there is a requirement that 30% of the value of goods purchased must come from suppliers within India. Further relaxation of these regulations should be made.

- 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, the conditions on such investments, such as the following, should be relaxed:
 - 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, 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 facilities 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.”
 - Stores must be established in cities with populations of at least one million people in the 2011 national census or in cities decided by the relevant state government.

- **Rationalize the scope of application of internal controls regulations**

- In India, even foreign companies that enter the Indian market in the form of overseas representative offices or project offices are required to establish and implement internal controls for financial processes and to verify their effectiveness. More flexible implementation of this requirement is requested for foreign companies, such as it being subject only to corporate bases that engage in business activities.

- **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 nationally and in each state 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 in accordance with the principle of taking effect on arrival, etc.), and public comments (systems to publish proposals for governmental and ministerial ordinances, etc. in advance and gather a broad range of public opinions).
- The transfer of corporate control due to a majority investment in an Indian company needs to obtain state government approval, but some states have not established guidelines for the procedures to obtain that approval.
- The various investment incentive schemes are difficult to understand and there are cases in which the applicable conditions are unclear, and cases in which it is difficult for foreign companies to take advantage of those schemes.
- For office inspections under the Shops and Establishments Act 1948, there is no clarification of the date of inspection, who will conduct the inspection, and what questions will be asked.
- To simplify the procedures for registering newly-established companies and obtaining the various licenses and permits, one-stop services and other counters have been established to facilitate the obtaining of licenses and approvals, but these counters only introduce the relevant organizations, and the business operators must go around the various government ministries and agencies themselves.
- There are cases in which application has been made to the state government for approval of land lease agreements, but there have been long waits for approval to be granted.
- At the Delhi Foreigner Registration Office, since around May 2017, it has been prohibited to have local personnel accompany the applicant when applying for registration. Therefore, the applicant must make an application alone and this is causing

trouble with procedures at the registration counter.

- When Japanese products sold in India are sent back to Japan for forming up (product standard adjustments or version upgrades), the number of days required for export procedures at Customs is longer than for other countries.

- **Ensure performance of administrative contracts, etc.**

- In projects in which state governments or national government-owned companies are involved, there are cases with construction work going unpaid and payment of extra costs remain unresolved. These are serious issues that causes concern about the uncertainty of doing business in India for foreign companies, and an early resolution is hoped for.

- **Rationalize industry standards**

- Currently in India, test data (CB Report) is used only for certain electronic products. For products subject to the Compulsory Registration Order under India's equipment registration regime, including televisions, projectors, smartphones, and secondary batteries, inspections of actual equipment must be conducted by a designated testing agency in India, which requires a longer time for assessment and testing compared to other countries. As a participating nations in the IEC System for Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE-CB), India should also permit the use of CB Reports for products subject to the Compulsory Registration Order. Also, operations at designated testing agency are sometimes suspended suddenly for the testing agency to be audited by the authorities, which impacts on the products being tested. More flexible responses should be adopted to enable testing to continue on products already in the midst of testing. Also, when product standards are updated, new approvals for existing models that have already been approved become necessary retrospectively, which requires an enormous amount of re-approvals. Improvements to this system should be made.
- The display of the manufacturer's name and address on the product nameplate has been prohibited without an official notice and it is now required to display the name of the production factory. This requirement exists only in India, and has a major impact on products that are destined for multiple countries, including India. Display of the

manufacturer's name and address should be permitted, or registration by brand owner should be conducted.

- Under the equipment registration regime, as soon as product registration is completed, information about new products is posted on the authorities' website before the products are released. This information should not be disclosed for a certain period of time.
- The equipment registration regime also covers second-hand products, but there are cases when it is not applied. Appropriate implementation, taking safety into account, should be made.

- **Rationalize waste regulations**

- Under plastic waste management regulations, plastic materials used for packaging of electronic/electrical products must be pre-registered and the registration number must be displayed. Also, requirements are imposed on these plastic materials, such as the prohibition of packaging materials that are less than 50µm thick and of packaging with multi-layered structures. These requirements should be amended to be more realistic and reasonable, such as taking into account the overall burden on the environment.
- From May 2017, under E-waste management regulations, for some electronic/electrical products, it was made compulsory for 70% of products sold in the past to be collected, but no systems for such collection have been established. Efficient systems should be established, referring to the examples of other countries.