

## 4.2.2 *Services trade and investment*

### 4.2.2.1 Services trade

#### *Overview*

Building upon commitments made during the Uruguay Round negotiations and the subsequent negotiations on financial services and basic telecommunications, Japan has made high-level trade liberalization offers in the current WTO services negotiations and thus is contributing to the further strengthening of the multilateral trade system in the field of services.

Japanese commitments cover a large number of sub-sectors, in many of which Japan made full commitments both in market access and national treatment. As for the most-favoured-nation treatment, the fundamental principle which underpins the multilateral system, Japan has played and will further play a leading role in minimizing exemptions.

As a major net importer of services, Japan's role has been significant in the expansion of trade in services. In addition, foreign direct investment in Japan in services areas has been increasing in the recent years.

The following are the major measures affecting market access and national treatment maintained by Japan, in respect of services trade.

#### **Movement of Natural Persons (Mode 4)**

With respect to the supply of services by the presence of natural persons or other movement of natural persons, Japan reserves the right to adopt or maintain any measure including immigration, entry or temporary stay, except for some cases, in principle, such as 'Intra-corporate Transferee' and 'Temporary Visitor' in which Japan has already made horizontal commitments in the GATS. An 'Intra-Corporate Transferee' who engages in the activities listed for the status of residence 'Intra-company transferee' under the Japanese immigration control law are granted a period of stay of either 1 or 3 years. The length of stay is decided through examination of all the aspects of applications. Both of the periods, where appropriate, will be extended.

Japanese immigration control law has neither limitations on the number of service suppliers nor limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service.

A spouse of a person with the status of intra-company transferee who meets requirements provided for in the *Immigration Control and Refugee Recognition Act* (Article 19, Paragraph 2) may be granted permission and may therefore work under the conditions provided for in the related immigration regulations (Article 19-2). In this case, the spouse will be able to enter and stay in Japan with the status of residence 'Dependent' as a dependent of a person residing in Japan with status of residence of 'Intra-company Transferee'.

A business visitor engaged in working activities is required to obtain a certificate of eligibility and visa conforming to his or her status of residence based on the immigration law under which he or she will stay in Japan. Under the system of certificate of eligibility, a foreign national may ask a contact who is

stipulated in the immigration control law (Article 7-2, paragraph 2) and regulations (Articles 6-2, Paragraph 3) in Japan, in place of him/her, to obtain the approval of a status of residence authorized by the Minister of Justice. By presenting the application documents at a regional immigration bureau, a certificate of eligibility for a status of residence can be obtained. This certificate will ensure that the processing of the visa application at a Japanese Embassy or Consulate office will be much smoother as will the immigration inspection process at a Japanese landing port.

A certificate of eligibility for a particular status of residence certifies the holder meets requirements for the landing provided in Article 7, Paragraph 1, Item 2 of the Japanese immigration control law.

Article 7. When the application referred to in Paragraph 2 of the preceding article is made, an Immigration Inspector shall conduct an examination of the said alien as to whether or not he meets each of the following conditions for landing in Japan. (In respect to the alien having received re-entry permission under the provisions of Article 26, Paragraph 1 or the Refugee Travel Document under the provisions of Article 61-2-6, Paragraph 1, only the conditions mentioned in the following Items (1) and (4) are to be applied.)

- (1) The passport possessed by the alien and the visa affixed thereto, if such is required, must be valid;
- (2) Activities to be engaged in Japan stated in the application must not be false, and must fall within one of the activities described in the right-hand column of Annexed Table I, (in respect of the activities described in the right-hand column of Annexed Table I (5), the proposed activities must be activities designated by the Minister of Justice in the Official Gazette), or the activities of a person with the civil status or position described in the right-hand column of Annexed Table II (the civil status or position in the right-hand column under Permanent Resident shall be excluded; in respect of the position specified under Long Term Resident, the proposed position must be one of the positions designated by the Minister of Justice in the Official Gazette), and shall fulfill in respect of those who intend to engage in the activities described in the right-hand column of Annexed Table I (2) and (4) the requirement provided for by the Ministry of Justice Ordinance which shall be stipulated in consideration of factors including but not limited to the effect on Japanese industry and public welfare.
- (3) The period of stay applied for must be in accordance with the provisions of the Ministry of Justice Ordinance stipulated under Article 2-2, Paragraph 3;
- (4) The alien must not fall within any one of the items of Article 5, Paragraph 1.

Note: Annex Table I (1) and (2) shows the activities for each status of residence for working. Article 5, Paragraph 1 prescribes the items shall be denied permission for landing in Japan.

Business visitors with a status of residence that allows them to work are able to stay for a maximum period of three years, where appropriate, this will be extended. There is no limitation on the number of times the period of stay may be extended.

Those in Japan as a "Temporary Visitor" are allowed to stay for 90 days; this will be extended, where appropriate, by another 90 days as the maximum period in current practice.

An Australian natural person making a short visit for purpose such as business and after-sale service may be permitted to enter Japan without obtaining visa as 'Temporary Visitor'. Contractual service suppliers

and persons who are skilled employees of an enterprise outside Japan, for example, could use these entry conditions for the purposes of providing maintenance or other services in Japan. This is subject to the condition that they do not acquire remuneration within Japan and do not engage in making direct sales to the general public or supply services themselves.

## Horizontal commitments

Japan has made no national treatment commitments on subsidies for research and development under the GATS.

## Sectoral overview

### 1. Business services

#### Legal services

Regarding legal services, Japan made commitments for the supply of services by qualified natural persons in the Uruguay Round negotiations.

#### **Legal services supplied by a lawyer qualified as “Bengoshi” under Japanese law**

These services must be supplied by a natural or legal profession corporation. To be qualified as a “Bengoshi” under Japanese law, he or she is required to pass a bar examination and complete legal training. A bengoshi is required to have commercial presence in Japan. Legal Profession Corporations are required to be incorporated in Japan.

A Legal Profession Corporation under the Japanese law is composed of one or more partners who are “Bengoshi” under Japanese law and have the right and obligation to execute activities of the Legal Profession Corporation.

#### **Consultancy on law of jurisdiction where the services supplier is a qualified lawyer**

To liberalize the legal services sector, the Government of Japan has taken all possible measures, including three amendments of the relevant law since the system was introduced in 1986. In 2003 the law concerning foreign lawyers was also revised to vastly improve the association and collaboration between Japanese lawyers and registered foreign lawyers under Japanese law. The amended law provides for the elimination of the prohibition on the employment of bengoshi by registered foreign lawyers and the elimination of the regulations on joint enterprises between registered foreign lawyers and Japanese lawyers.

#### **Outline of Amendment to the Special Measures Law concerning the Handling of Legal Business by Foreign Lawyers**

On July 18, 2003, the *Law for Partial Amendment to the Court Organization Law for Reform of the Judicial System* (Law No. 128 of 2003, hereinafter to be referred to as the “Collective Law”), including amendment of the *Special Measures Law concerning the Handling of Legal Business by Foreign Lawyers* (hereinafter to be referred to as the “Gaiben Law”) was approved by the Diet and promulgated on the 25th of the same month.

An outline of the points amending the Gaiben Law is as follows:

1. Deletion of the provisions for prohibiting a gaikokuho-jimu-bengoshi from employing a bengoshi
  - (1) The provisions for prohibiting a gaikokuho-jimu-bengoshi (hereinafter to be referred to as "gaiben") from employing a bengoshi are to be deleted (Art. 49 of the existing Gaiben Law). Therefore, employment of bengoshi by a gaiben will be permitted.
  - (2) The provisions for prohibiting the running of a joint enterprise between a gaiben and a bengoshi or legal profession corporation (hereinafter to be referred to as "bengoshi, etc.") and the sharing of profits gained between them (Arts. 49 of the existing Gaiben Law) are to be deleted, and the specific joint enterprise system (Arts. 49-2 of the existing Gaiben Law) is to be abolished. Therefore, restrictions will be lifted on the running of a joint enterprise between them and on the sharing of profits gained from the joint enterprise.
2. Prohibition of business orders, based on employment relations, for the handling of legal business which is outside the scope of competence
 

With regard to the handling of legal business beyond the scope of business which a gaiben who employs a bengoshi or gaiben is authorized to perform (hereinafter to be referred to as "legal business outside the scope of competence"), measures are to be taken to prohibit the gaiben from giving a business order to the bengoshi or gaiben employed, based on employment relations, thus preventing the gaiben from performing conduct beyond the scope of competence. (Art. 49, Amended Gaiben Law)
3. Prohibition of improper intervention in a gaikokuho joint enterprise
 

A gaiben who runs a joint enterprise which has as its object the performance of legal business with a bengoshi, etc. under a kumiai contract or other continuous contract (hereinafter to be referred to as "gaikokuho joint enterprise") is to be prohibited from intervening improperly in the handling of legal business to be performed by the bengoshi, etc. who runs the joint enterprise concerned which is outside the scope of competence of the gaiben. (Art. 49-2, Amended Gaiben Law)
4. Notification of employment of a bengoshi and of the running of a gaikokuho joint enterprise
 

A gaiben who employs a bengoshi or runs a gaikokuho joint enterprise with a bengoshi, etc. is to be required to give notification to the Japan Federation of Bar Associations. (Art. 49-3, Amended Gaiben Law)
5. Indication of a gaikokuho joint enterprise
 

A gaiben who has made the notification of the gaikokuho joint enterprise is to be required to add to the title of his or her office the words indicating that he or she runs the gaikokuho joint enterprise and the title of the office of the bengoshi, etc. who runs the joint enterprise concerned, except when he or she comes under the special case provided for in Item 6. (Art. 49-4, Amended Gaiben Law)
6. Special case concerning the title of the office which runs a gaikokuho joint enterprise satisfying specific requirements
 

The office of a gaiben who runs a gaikokuho joint enterprise satisfying specific requirements is to be authorized to use the same title as that of the office of the bengoshi, etc. who runs the joint enterprise concerned, using the Japanese wording "gaikokuho-kyodo-jigyo". (Art. 49-5, Amended Gaiben Law)
7. Date of enforcement
 

The date of enforcement of the Collective Law is April 1, 2004, but Items 1 to 6 above and the necessary supplementary amendments are to be enforced as from April 1, 2005.

In order for foreign lawyers to provide legal services concerning the law of primary qualification and third country law, they should be qualified as “Gaikokuho-Jimu-Bengoshi” (hereinafter referred to as “GJB”) under the Special Law, through the receipt of approval from the Minister of Justice. The requirements of this approval are as follows, mainly aiming at protecting clients:

1. The applicant must be qualified as a lawyer in their home country.
2. After obtaining qualification in the home country, the applicant must have engaged in the practice of law for 3 years or more (it is possible to include up to 1 year of work experience as a trainee in Japan);
3. The applicant must plan to engage in practice and perform their work faithfully, with a residence and financial basis to perform their services, and the ability to compensate for any damages caused to its clients; and
4. The applicant must not be adjudicated incompetent, bankrupt, or sanctioned by their home professional association, or found guilty for violation of law or regulations.

Once a Foreign Lawyer has obtained approval from the Minister of Justice, he or she must register as a special foreign member with the Japan Federation of Bar Associations (JFBA/Nichibenren) through the local bar association such as Toben.

A properly registered GJB is allowed to render legal services primarily concerning the law of the Country of Primary Qualification. Under certain conditions, GJB may be permitted to give advice on a third country law. Such conditions include the acquisition of a letter of confirmation from a qualified lawyer of the relevant jurisdiction, with the purpose of protecting clients (this condition does not apply to bengoshi).

The scope of practice of GJB does not include:

1. legal representation for juridical procedures in courts and other government agencies as well as preparation of legal documents for such procedures;
2. expression of legal opinions concerning laws other than laws of the jurisdiction where the service supplier is qualified as a lawyer;
3. legal representation for the entrustment of the preparation of notarial deeds; and
4. those activities concerning a legal case whose primary objective is the acquisition or loss or change of rights concerning real property in Japan or of industrial property rights, mining rights or other rights arising upon registration thereof with government agencies in Japan.

GJB are required to perform legal services jointly with bengoshi or act on their written advice in matters involving representation or preparation of documents in legal cases concerning: family relations in which a Japanese national is involved as a party or, a will or contract of gift to become effective at death which involves a property situated in Japan; and the division or administration of estate or other matters of inheritance which involves a property situated in Japan and owned by a person who resided in Japan at the time of death and in which a Japanese national is involved as a party, in legal case whose objective is the acquisition or loss or change of rights concerning real property situated in Japan or industrial property rights, mining rights or other rights arising upon registration thereof with government agencies in Japan, as long as the above objective is not primary one.

### Patent attorney services

Under the *Patent Attorney Law*, there is no discrimination between the Japanese and foreign people over qualification as a patent attorney. However, patent attorneys must have their domicile or residence in Japan when they represent applicants who have neither their domicile nor residence in Japan.

### Accounting, auditing and book-keeping services

To become qualified as a Certified Public Accountant (CPA) “Konin Kaikeishi” in Japan, an individual must pass the CPA examination. In addition, registering in the CPA list after more than three years’ practical business experience is also required. This also applies to non-Japanese people, in principle. However, those who have qualifications of a CPA in other countries can be qualified as a CPA in Japan, if they are approved of their qualifications by the Prime Minister, and are registered in foreign CPA lists.

### Taxation services

Under the Certificated Public Tax Accountant Law, Article 40 and 52, a natural person qualified as “Certified Public Tax Accountant (CPTA)” under the Japanese law can establish an office for conducting the CPTA business. A person who falls under any one of the following categories can qualify as a Certified Public Tax Accountant.

1. A person who has passed the Certified Public Tax Accountant Examination
2. A person who is exempted from the Certified Public Tax Accountant Examination for all the required subjects
3. A lawyer “Bengoshi”
4. A Certified Public Accountant “Konin Kaikeishi”.

Any person other than a CPTA and a “CPTAs’ corporation” can not be engaged in the CPTA business.

### Architectural services

Under the GATS, Japan has made commitments for all modes of supply except for mode 4. However, commercial presence is required where “Kenchikushi” or a person who employs “Kenchikushi” supplies the certain categories of services. “Kenchikushi” is a professional certification under the *Kenchikushi Law* (Law No. 202 of 1950) that certifies that a person is qualified to conduct such services as designing buildings and superintending construction work. Those who have obtained an overseas license for building design may obtain a Kenchikushi license without taking the ordinary examination specified in the *Kenchikushi Law* if the Minister of Land, Infrastructure and Transport concludes that they have qualifications equal or superior to that of 1st-class Kenchikushi, or if a prefectural governor concludes that they have qualifications equal or superior to that of 2nd-class Kenchikushi or Mokuzo-Kenchikushi.

### Engineering services and integrated engineering services

Japan has made full commitments on engineering services (excluding services related to petroleum, petroleum products, gas and minerals) except for mode 4. Services related to petroleum, petroleum products, gas and minerals are reserved on the basis that they may be regulated in the future.

### Real estate services

Under the GATS, Japan has made commitments all modes of supply except for mode 4. However, a commercial presence is required where a service supplier deals with property in Japan.

### Research and development services

Japan has made commitments on research and development services in the social sciences and the humanities. But Japan maintains discriminatory treatment with respect to subsidies for Research and Development.

### Other business services

Japan's GATS commitments on related scientific and technical consulting services do not cover services related to petroleum, petroleum products, gas and minerals, because they may be regulated in the future.

## *2. Communication services*

### Telecommunication services

Since Japan opened its market for telecommunication services in 1985, ceaseless efforts for deregulation and the promotion of competition have been made.

In April 2004, the *Revised Telecommunication Business Law* came into effect. The Law resulted from the need to review the overall structure of the Telecommunications Business Law in order to adapt to the move from the "Telephone Age" to the "Internet Age" and to encourage diverse business development among carriers.

Japan's efforts at deregulation and promotion of competition have made it one of the most advanced countries in the area of broadband. The number of broadband subscribers in Japan has increased incrementally since the first quarter of 2002. The number of the subscribers to fiber-optic services (FTTH, for general use) was 1,601,432 as of end-August 2004. There were 12,549,066 DSL subscribers as of end-August 2004 and the number of cable internet subscribers was 2,768,000 as of end-August 2004. In terms of numbers of broadband subscribers, the United States, Korea and Japan are the top 3 countries in the world. Further, as a result of advancing competition, the fees for DSL services in Japan are the most inexpensive in the world.

The fair, neutral and pro-competitive policy of Ministry of Internal Affairs and Communications has worked effectively in ensuring that broadband services are now available in Japan with the highest speed and lowest costs in the world. NTT East and West, incumbent PSTN operators, account for only 37 per cent in the DSL service market. The OECD/ICCP report declassified on June 15 2004, "Benchmarking Broadband prices in the OECD" (DSTI/ICCP/TISP (2003)8/FINAL) states as follows:

"Overall, taking into account all aspects of service such as price and performance levels it might be concluded that Korea, Canada, the United States, Japan and Belgium had the most competitive markets based on the incumbent's prices." "Japan has been one of the fastest growing broadband markets in the OECD since the final quarter of 2001. This is due to policies aimed to promote competition, such as rules for unbundling and co location of subscriber lines." "Overall Japan has among the lowest priced broadband access in the OECD and the highest performance available for those prices."

The Ministry of Internal Affairs and Communications, which operates separately from telecommunication operators, is responsible for the regulation of telecommunications. Transparency is secured by such means as the Administrative Procedure Law, public comment procedure and the disclosure of discussions held by the Councils. The current system has secured fairness and neutrality of administrative procedures.

On April 1, 2004, the amended *Telecommunications Business Law* (TBL) aiming at promoting further competition in the telecommunications business, came into effect.

The amended TBL introduces a variety of fundamental deregulatory measures, which are expected to realize a more competitive telecommunications market including abolition of the Type I (facility-based) and Type II (others) business categories as well as the permission system for new entrants, and abolition of obligations to file and publicize tariffs.

In addition, carrier pre-selection and number portability on local calls have already been implemented. Mobile number portability is scheduled to commence in JFY2006.

Since the entry into force of the WTO Basic Telecommunications Agreement, Japan has abolished limitations on foreign capital participation in telecommunications carriers (excluding foreign capital participation in Nippon Telegraph and Telephone Corporation). Japan undertook the reference paper as additional commitment under the WTO/GATS.

#### Audio-visual services

On Motion Picture and Video Tape Production and Distribution Services as well as Sound Recording Services, Japan has made full commitments except for mode 4.

#### *3. Construction and related engineering services*

Under the GATS, Japan has made full commitments on mode 2 and mode 3 but not mode 1 and mode 4. Japan's GATS commitments cover all types of construction work with the exception of services relating to mining. In general, there is no measure which is inconsistent with market access and national treatment, except that only a Japanese national or a Japanese legal person may have mining rights or mining lease rights under the *Mining Law* (Law No.289 of 1950), Article 17 and 87.

#### *4. Distribution services*

Japan has made full commitments for mode 1, mode 2, and mode 3 with respect to distribution services, commission agents' services, wholesale trade services, retail services and franchising services, except for mode 4 where horizontal commitments in Japan's GATS schedule remain unbound. Japan's GATS commitments do not cover services related to petroleum, petroleum products, rice, tobacco, alcoholic beverages and those supplied at public wholesale market. Providers of wholesale services of alcoholic beverages are required to obtain a license, while those who intend to conduct retail sale business of manufactured tobacco must obtain the permission of the Minister of Finance.

Public wholesale markets are markets established under national or local government approval for commission agents' services and wholesale of fresh foods including vegetables, fruits, marine products, meats and other daily foods, and flowers, with auction or bidding halls, parking lots and other facilities necessary for trade and disposal of these goods operated on a permanent basis.

Under the recently introduced *Law Concerning the Measures by Large-Scale Retail Stores for Preservation of the Living Environment*, guidelines for handling environmental problems around large-scale stores, such



as traffic jams or noises, apply to the entry of large scale retailers. Processing times for applications filed with local authorities under this law (*Dai Ten Ricchi Ho*) are between four and eight months.

### *5. Education services*

#### Commitments under WTO

Institutions that provide education services in Japan include Formal Education Institutions (which mean elementary schools, lower secondary schools, secondary schools, upper secondary schools, universities, junior colleges, colleges of technology, schools for the blind, schools for the deaf, schools for the handicapped and kindergartens), Specialized Training Colleges and Miscellaneous Schools. Each classification is stipulated in the Article 1, 82 and 83 of the *School Education Law*. The above are under the jurisdiction of either the Ministry of Education, Culture, Sports, Science and Technology (the MEXT) or the prefectures.

Existing in addition to these are education institutions that take corporate forms such as joint stock corporations where the pursuit of profit is possible; for example cram schools, which provide education services aimed at advancement to a higher level school, and education institutions that provide language education services. The MEXT's regulatory authority does not extend to such institutions.

In Japan's GATS schedule under the WTO, services provided by Formal Education Institutions are classified as Primary and Secondary or Higher Educational Services; and education services provided by specialized training colleges and miscellaneous schools as Adult Education and Other Education services. However, specialized training colleges and miscellaneous schools can also provide services of the higher education level.

Concerning Primary Educational Services and Secondary Educational Services, Japan has made commitments under Mode 3. Japan has the market access limitation under Mode 3 that Formal Education Institutions must be established by school juridical persons, as stipulated in the School Education Law. But Japan has no national treatment limitation under Mode 3.

Concerning Higher Educational Services, Japan's GATS schedule remains unbound under mode 1 since Japan has concerns about the quality of education provided through correspondence courses from foreign countries. Under Mode 2, Japan has neither market access nor national treatment limitations as many university students are already engaged in studies overseas. Under Mode 3, like Primary Educational Services and Secondary Educational Services, Japan has the market access limitation that Formal Education Institutions must be established by school juridical persons, but Japan has no national treatment limitation under Mode 3.

With respect to adult and other educational services, Japan has made full commitments except for Mode 4.

#### Fundamental Thinking

Foreign national and education institutions are not forbidden from setting up education institutions and providing education services in Japan. Consequently, despite their legal classifications as education institutions, what form of establishment they take in Japan, in accordance with the content of the education service intended, depends on the relevant institution's or relevant person's free judgment.

However, if the relevant institution or person wishes to establish a formal education institution (which is under the MEXT's or the relevant prefecture's jurisdiction) under the School Education Law, for which

Japan has made commitments on Primary, Secondary or Higher Educational Services under the GATS, establishment of a school juridical person will be required.

### School Juridical Person

A school juridical person is a non-profit person that aims to establish and operate a formal education institution, which is established in accordance with the *Private School Law* and with the approval of either the minister of the MEXT or the governor of the applicable prefecture. The *Private School Law* makes stipulations about assets, organization, etc. from the standpoint of guaranteeing the public good and a school juridical person is required to conform to the conditions set in that law. For example, a stable financial basis and facilities for school management is required.

Once an institution is approved as a school juridical person, it will come to be recognized as non-profit and serving the public good. This not only increases its level of trust but also has the merit of acquiring financial administration advantages such as favourable taxation measures. In any case, a school juridical person can be established by either Japanese or foreigners without any discrimination, and there are also no regulations concerning foreign capital.

The MEXT has amended relevant regulations to improve their consistency between branches of foreign higher education institutions in Japan and Japanese universities in December 2004. Based on these amendments, the MEXT Minister will designate those branches of foreign higher education institutions in Japan that are officially confirmed through foreign embassies in Japan as being formally recognized as educational institutions (either a university, graduate school or junior college) in the school education system of the home country. The designation is individually made public in the Daily Official Japanese Government Report (*Kanpo*).

Due to these amendments, qualification for admission to a Japanese graduate school, qualification for admission to a Japanese university as a transfer student and transfer of credits to a Japanese university will be recognized for students from designated branches of foreign universities in Japan.<sup>18</sup>

### *6. Environmental services*

Under the GATS, Japan has made full commitments on mode 2 and mode 3 but not mode 1 and mode 4. There are, however, no specific measures to restrict mode 1 trade in environmental services such as environmental consulting in Japan. The restriction on number of licenses for service suppliers of waste oil disposal at sea has already been abolished.

### *7. Financial services*

As a result of its 1997 commitment under the GATS, Japan has already committed itself to high-level of liberalization by international standards.

Life insurance companies are required to disclose information on their liability reserves and solvency margins. Such disclosure requirements are consistent with generally acceptable international practices. Life and general insurance companies are required to seek Financial Services Agency approval prior to releasing new insurance products and for pricing of those products.

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<sup>18</sup> A designated branch of a foreign university in Japan is treated as equivalent to the university in its home country, not as a university in the Japanese formal education system. In addition, although the qualifications are recognized in the Japanese education system, actual admission of an individual to a university depends on each university's decision.

It is prohibited for a single company to provide both life and non-life insurance services, because the risk involved and the terms of insurance contracts are different between the two services and it is necessary to disconnect those risks, protecting policyholders. However, providing both services by a single company is possible by the means of establishing a separate subsidiary for each respective service.

The Postal Life Insurance Bureau (*Kampo*) is regulated by the Ministry of Internal Affairs and Communications, making it subject to different business, regulatory and tax measures than its private sector competitors. For example, *Kampo* is not required to pay into the Life Policy Protection Corporation.

Many mutual societies (*kyosa*) are not subject to the same regulatory supervision on reserving, solvency, protection fund payments and compliance as private sector insurance firms. When a foreign bank establishes or relocates its branches in Japan, it needs to be approved by the Financial Services Agency (FSA). This measure is aimed at protecting depositors as a foreign bank is not directly supervised by the FSA. Upon receipt of an application for a license to engage in banking business, the Prime Minister must conduct an examination appropriately and fairly as to whether the petition satisfies the criteria of Article 4 paragraph 2 of the *Banking Law*.

Banks are only permitted to sell certain types of insurance products (eg. long term fire insurance, credit life insurance and *zaikai* personal accident insurance). Article 65 of the Securities and Exchange Law prohibits banks from conducting securities business and vice versa. However, reforms enacted in 2002 allow banks and securities firms to share common space to promote the sales of securities products to retail investors.

#### *8. Health related and social services*

On health related and social services, Japan has made full commitments on mode 2 and a partial commitment on mode 3 (only in the hospital services). There are restrictions on the participation of stock companies in the ownership and management of medical facilities such as hospitals and aged-care homes. For example, stock companies are not permitted to hold a controlling ownership stake or participate in the management of medical facilities. In addition, the 1948 *Medical Law* stipulates that only natural persons (usually doctors) have management control of medical facilities.

#### *9. Tourism and travel related services*

Under the GATS, Japan has made full commitments on mode 2 and mode 3 but not on mode 1 for hotels, restaurants services (excluding catering services), and tourist guide services due to lack of technical feasibility. There is no restriction on foreign travel agents establishing commercial presence in Japan.

#### *10. Recreational, Cultural, and Sporting Services*

Japan has made commitments on Entertainment Services, News Agency Services, Library and Archive Services, Sporting and some other Recreational Services under mode 2 and mode 3.

#### *11. Transport services*

##### Maritime transport services

In the WTO, Maritime Transport Services are under negotiation, however Japan has made commitments on Maritime Transportation Services except Cabotage Transport along with the model schedule. Japan has reserved commercial presence, based on its *Ship Law*, in its initial offer.

The *Ship Law* requires that coastal shipping services, including both passenger and goods transport, should only use Japanese flag ships. Unless otherwise specified in the laws and regulations of Japan, or international agreements to which Japan is a party, ships not flying the Japanese flag are prohibited from entering Japanese ports which are not open to foreign commerce and from carrying cargoes or passengers between Japanese ports.

Restriction or prohibition of a) entry in Japanese ports and b) loading or unloading of cargoes in Japanese ports for a designated period may be imposed as a countermeasure on an operator or vessels who belong to the country in which interests of Japanese operators continue to be substantially damaged, regardless of prior notification of taking such measure, under unfavourable treatment imposed on them by that country or by local authorities or similar entities of that country.

### Air transport services

Matters related to air traffic rights are dealt with in accordance with the international framework which is based on bilateral agreements.

Under the GATS, Japan has made full commitments on mode 1, mode 2 and mode 3 for selling and marketing services and computer reservation system services.

### Rail transport services

Under the GATS, Japan has made full commitments on mode 2 and mode 3 but not on mode 1 due to lack of technical feasibility on maintenance and repair services of rail transport equipment. With respect to rental services of railway transport equipment with operators, Japan has made full commitments on mode 1, mode 2, and mode 3. Japan has no commitments on other rail transport services.

### Road transport services

Under the GATS, Japan has made commitments on road freight transport services, but has entered reservations on commercial presence. On a temporary and non-discriminatory basis, limitations on the number of service suppliers and on the number of service operations or on the quantity of service output maybe applied. With respect to (a) taxicab and (b) certain types of trucking businesses, the Minister of Land, Infrastructure and Transport (MLIT) may not grant permission to a person who intends to conduct those businesses, or may not approve a modification of the business plan of such businesses, in a designated area which the MLIT designated as the “emergency supply/demand adjustment area” where the MLIT considers that the capacity of those businesses in that area has significantly exceeded the volumes of transportation demand to the extent that (a) in the case of taxicabs, it would be difficult to secure the safety of transportation and the benefits of passengers, or (b) in the case of trucking, the operation of existing businesses would become difficult. These restrictions remain in place less than 1 year after designation. Those with an existing commercial presence are entitled to continue to operate regardless of these restrictions.

Japan has made full commitments on mode 2 and mode 3 but not on mode 1 due to lack of technical feasibility for maintenance and repair services of road transport equipment. Japan has no commitments on other road transport services.

### Port services

Japan uses licensing systems for supply and demand adjustment in ports other than its nine major ports. In regard to ports other than the nine major ports, the Ministry of Land, Infrastructure and Transport is to submit a bill to introduce the same regulatory reform as in the nine major ports, including the elimination of supply and demand adjusting regulation, to the Diet session in JFY2004.

### Services auxiliary to all modes of transport (excluding services related to petroleum and petroleum products)

Under the GATS, Japan has made full commitments on consumption abroad and commercial presence but not on cross-border supply due to lack of technical feasibility for storage and warehouse services.

Japan has no commitments about other services auxiliary to all modes of transport

### Freight forwarding business

Engagement in freight forwarding business, making use of automobiles, railroads and domestic vessels in Japan, requires the permission or the registration under the *Law of Freight Forwarding Business* and is required to establish an office in Japan. There are no measures inconsistent with national treatment.

A person who intends to conduct freight forwarding business using international vessels in Japan is required to establish an office in Japan, and an operation permit or governmental registration will be granted only to firms of those countries in which Japanese firms are eligible for such permit or qualify for such registration.

### *12. Services in aerospace (manufacturing) industry*

Under *Foreign Exchange and Foreign Trade Law* and related rules as well as *Aircraft Manufacturing Industries Law*, Japan reserves the right to adopt or maintain any measure relating to the supply of services in the aircraft and space industry.

### *13. Services in arms and explosives manufacturing industry*

Under *Foreign Exchange and Foreign Trade Law* and related rules as well as *Ordnance Manufacturing Law*, Japan reserves the right to adopt or maintain any measure relating to supply of services in the arms industry and explosives manufacturing industry.

## **4.2.2.2 Investment**

The following outlines Japan's major measures affecting market access national treatment maintained for foreign investment and the Japanese government's efforts at promotion.

### *Prior notification procedures for inward direct investments in Japan*

Under the *Foreign Exchange and Foreign Trade Law*, which stipulates procedures for inward direct investments in Japan, foreign investors attempting to invest in Japan, in principle, need only present a report to the Minister of Finance and the Ministers in charge of the industry involved through the Bank of Japan after executing the investments (Ex post facto reporting). In certain cases, a prior notification procedure is required on the investments in some industries recognized in the article 3 of the OECD Code of Liberalization of Capital Movements as "industries with the potential to compromise a country's safety, prevent maintenance of law and order, or cause damage to the protection of public safety"

(aviation, maritime transport, arms, nuclear energy, space, telecommunication, broadcasting, waterworks, explosives manufacturing, electricity utility, gas utility etc.) or where liberalization is reserved under the List A of Annex A stipulated in the article 2 (b) above mentioned code (agriculture, forestry and fisheries industries, petroleum industries, leather and leather products manufacturing industries, arms and arms industries, and drugs etc.).

The prior notification procedure is as follows:

(1) Where a prior notification is required for an inward direct investment, the foreign investor must send a notification to the Minister of Finance and the Minister in charge of the industry involved, through the Bank of Japan, within 3 months prior to the intended investment being made.

(2) The party providing the notification must not execute the relevant investment project until at least 30 days after receipt of the notification by the Minister of Finance and the Minister in charge of the industry involved (no-action period). However, if the Ministers involved see no special problem with the investment, they can shorten the no-action period and allow execution of the transaction 2 weeks after receipt of the notification. If necessary, they can extend the no-action period up to five months.

(3) On the other hand, if problems are perceived after review, recommendations or orders may be made to change or cancel the details of the notification after hearing the opinions of the Council on Customs, Tariff, Foreign Exchange and Other Transactions. Problems with the investment project will generally take one of the following forms:

1. It might endanger national security, disturb the maintenance of public order, or hamper the protection of public safety; or
2. It might adversely and seriously affect the smooth management of the Japanese economy.

## **Mining**

Under *Mining Law 1950*, "no party shall mine nor obtain a mined mineral unless said party has a mining rights" (Article 7) and "no one other than a Japanese national or a Japanese legal person shall become a mining rights or mining lease rights owner, provided that this shall not apply when otherwise provided for by a Treaty." (Article 17 and 87)

In addition, a non-Japanese national and a non-Japanese legal person are able to have a mining rights or mining lease rights if they establish a corporation based on Japanese law.

## **Telecommunications services**

Under *Law Concerning Nippon Telegraph and Telephone Corporation, Etc*, the ratio of voting rights of foreigners in aggregate, direct and/or indirect, in Nippon Telegraph and Telephone Corporation (NTT) must be less than one-third. Board members and auditors in NTT, Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation are required to have Japanese nationality.

In Japan, there exist no requirements or procedures that only apply to the development and use of telecommunications infrastructure by foreign investors.

## Broadcasting

With regard to broadcasting services except cable television and broadcast on telecommunications services, under the *Radio Law* and the *Broadcast Law*, foreigners or foreign-controlled enterprises (where any of their executive directors is a foreigner or one fifth or more of the aggregate of voting rights are owned by foreigners) are not granted licenses for radio or television broadcasting stations or approval as “programme-supplying broadcasters”. And foreigners or foreign-controlled enterprises (where they are represented by a foreigner, or one third or more officers of them are foreigners, or one third or more of the aggregate of voting rights are owned by foreigners) are not granted approvals as “facility-supplying broadcasters”.

## Maritime transport

Foreign ownership of Japanese flag ships can only occur through a company incorporated in Japan where less than one third of the members of the board of directors can be foreigners. All FDI in coastal shipping businesses is subject to prior notification, as set out in the *Foreign Exchange Law*, and following assessment of the proposal the Government may order a suspension or changes to the proposal.

## Air transport

Licenses to operate airlines are granted to enterprises where less than one third of the voting rights are held by foreigners, CEOs are not foreigners and less than one third of the Board of Directors are foreigners.

### *The Promotion of Foreign Investment in Japan*

Recognizing the importance of attracting more FDI, Prime Minister Koizumi announced in his General Policy Speech of January 2003 that he would aim at doubling the cumulative stock of foreign direct investment to Japan (JPY 6,600 billion as at 2001) within five years, and since then Japan has been accelerating its efforts to promote investments to Japan.

Japan is now working to establish a better and more effective investment environment for investors. In carrying out the “Program for the Promotion of Foreign Direct Investment in Japan” produced by the Expert Committee that resides and operates under the Japan Investment Council (JIC), Japan has set out clear goals on improving its investment environment through 5 core measures, namely (1) Dissemination of information within Japan and abroad (Communicating Japan’s appeal and welcoming service), (2) Improvements in the Corporate Business Environment (Environment to facilitate participation and business activity), (3) Reviewing Administrative Procedures (Making them clearer, simpler, faster), (4) Create Favorable Employment and Living Environment (Easing entry of personnel and providing a more comfortable living conditions for foreigners), and (5) Improve Local and National Structures and Systems (Facilitating ingenious approaches at regional levels).