

ANNEX V A

LIST OF EXCEPTIONS
IN THE AREA OF INVESTMENT
(Japan)

Horizontal Exceptions

1. (a) Matter: Land Transaction
- (b) Legal Source or Authority: Alien Land Law (Law No. 42, 1925)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: With respect to acquisition or lease of land properties in Japan, prohibitions or restrictions may be imposed by Cabinet Ordinances on Singapore nationals or entities, where Japanese nationals or entities are placed under identical or similar prohibitions or restrictions in Singapore.

2. (a) Matter: Prior Notification
- (b) Legal Source or Authority: Foreign Exchange and Foreign Trade Law (Law No. 228, 1949)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: The prior notification requirement under Article 27 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) shall apply to the following sectors:
 - Primary Industry related to Agriculture, Forestry and Fisheries
 - Oil Industry
 - Leather and Leather Products Manufacturing Industry

- Heat Supply Industry
- Biological Preparations Manufacturing Industry
- Water Supply and Water Works Industry
- Railway Transport Industry
- Omnibus Industry
- Water Transport Industry
- Telecommunications Industry
- Security Industry.

Note 1: All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the "Oil Industry". Therefore, prior notification under the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) is not required for the investment in manufacturing these products.

Note 2: Biological Preparations Manufacturing Industry deals with establishments which mainly produce vaccine, serum, toxoid, antitoxin and some preparations similar to the aforementioned products, or blood products.

Note 3: Freight Forwarding Industry is not included in any of Railway Transport, Omnibus or Water Transport Industry.

Note 4: The manufacture of vehicles, parts and components for the Railway Transport Industry is not included in Railway Transport Industry and is exempted from prior notification requirements.

Note 5: The manufacture of vehicles, parts and components is not included in Omnibus Industry and is exempted from prior notification requirements.

Note 6: Water Transport Industry refers to Oceangoing/Seagoing Transport, Coastwise Transport (i.e. maritime transport between ports in Japan), Inland Water Transport and Ship Leasing Industry. However, Oceangoing/Seagoing Transport Industry and Ship Leasing Industry excluding Coastwise Ship Leasing Industry are exempted from prior notification requirements.

3. (a) Matter: Formalities
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: Formalities may be prescribed in connection with the investment-related activities of Singapore investors, provided that such formalities:
- (i) only require the notification of facts or the submission of documents for proof;
 - (ii) do not impair the substance of the rights provided for in this Chapter;
 - (iii) do not entail any discretionary approval; and
 - (iv) are not implemented in an arbitrary or discriminatory manner.

Such formalities include:

- (A) Article 479 and paragraph 1 of Article 481 of the Commercial Code (Law No. 48, 1899)

According to the Commercial Code (Law No. 48, 1899), if a foreign company intends to engage in commercial transactions as a continuing business in Japan, it shall appoint a representative in Japan and establish an office of business at the residence of such representative or at any other place. The foreign company has to register its office of business in accordance with the same procedures as those required for the registration of a branch office of a company established in Japan which is either of the same nature or of the kind which it most closely resembles. The full name and permanent residence of its representative in Japan must also be registered.

- (B) Article 55-5 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949)

Article 55-5 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) requires foreign investors to submit ex post facto reports to the Minister of Finance and the Minister(s) in charge of the industry involved after implementing a foreign investment in Japan. (This shall not apply to the foreign investment for which prior notification is required.)

4. (a) Matter: Public Monopoly and State Enterprise
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: National treatment shall not apply to:
- (i) the disposal of a public monopoly or a state enterprise either at one time or in stages;^(Note) and
- Note: Paragraph (i) above includes the liberalising of certain activities restricted to that public monopoly or that state enterprise by laws and regulations.
- (ii) the establishment of successor public monopolies or successor state enterprises in the same sector as the public monopoly or state enterprise which has been disposed of.
5. (a) Matter: Subsidies
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: National treatment may not be accorded in the case of subsidies designed for research and development investments.

6. (a) Matter: Permanent Residents
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: There may be limitations on the treatment accorded to the investors who have the right of permanent residence in Singapore, where Japan adopts or maintains measures pursuant to its domestic laws and regulations whose implementation would be prejudiced if the treatment accorded to the investors who have the right of permanent residence in Singapore is equivalent to the treatment accorded to the investors who are nationals of Singapore.

Such measures include those pursuant to Article 27 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949).

In respect of the investors who have the right of permanent residence in Singapore, to whom sub-paragraph 2 of paragraph 3 of Article 27 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) is applicable on the basis of their nationality, the notification to competent authorities is required prior to investment in all sectors.

- (e) Others:
- (i) In cases where Japan takes any measures mentioned above, Japan will notify Singapore of the description of the measure before such measure is taken;
- (ii) with reference to the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949), Japan will notify Singapore before any new country is added to the list of countries to which sub-paragraph 2 of paragraph 3 of Article 27 of the above Law applies; and

- (iii) Japan will receive the views of Singapore on such measure in writing before implementing the measure in question and will take such views into consideration. Japan will promptly notify Singapore if Japan thereafter intends to proceed with the implementation of the measure in question.

Sectoral Exceptions

- 7. (a) Sector: Agriculture, Plant Breeder's Right
- (b) Legal Source or Authority: Seeds and Seedlings Law (Law No. 83, 1998), Seeds and Seedlings Law Enforcement Regulation
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:
 - (i) According to Article 10 of the Seeds and Seedlings Law (Law No. 83, 1998), a foreigner who has neither a domicile nor residence (nor establishment, in the case of a legal person) in Japan cannot enjoy a breeder's right except in any of the following cases:
 - (A) where the State of which the person is a national or the State in which the person has a domicile or residence (or its establishment, in the case of a legal person) is a contracting party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978 and on March 19, 1991 (hereinafter referred to in this Annex as "the 1991 UPOV Convention");

- (B) where the State of which the person is a national or the State in which the person has a domicile or residence (or its establishment, in the case of a legal person) is a contracting party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972 and on October 23, 1978 (hereinafter referred to in this Annex as "the 1978 UPOV Convention") and further provides the protection for plant genus and species to which the person's applied variety belongs; or
- (C) where the State of which the person is a national provides Japanese nationals with the protection of varieties under the same condition as its own nationals and further provides the protection for plant genus and species to which the person's applied variety belongs.

Since Singapore is not a contracting party to either the 1991 UPOV Convention or to the 1978 UPOV Convention, and does not provide Japanese nationals with the protection of varieties, the person who is a national of Singapore or has a domicile or residence (or its establishment, in the case of a legal person) in Singapore (excluding the cases provided for in (i)(A), (i)(B) and (i)(C)) cannot enjoy plant breeder's right in Japan. This paragraph shall cease to apply if Singapore becomes a contracting party to the 1991 UPOV Convention or provides Japanese nationals with the protection of varieties under the same conditions as its own nationals and further provides the protection for plant genus and species to which the person's applied variety belongs.

- (ii) The Seeds and Seedlings Law Enforcement Regulation requires foreign applicants to attach a document certifying his or her nationality and any one of the documents set out below:

- (A) a document certifying the fact that the applicant has a domicile or residence (or its establishment, in the case of a legal person) in Japan; or
 - (B) a document certifying the fact that the applicant has a domicile or residence (or its establishment, in the case of a legal person) in the territory of a contracting party to the 1991 UPOV Convention or to the 1978 UPOV Convention, other than Japan.
8. (a) Sector: Mining Industry including Oil and Natural Gas Exploration and Development
- (b) Legal Source or Authority: Mining Law (Law No. 289, 1950)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: Persons other than Japanese nationals and Japanese legal persons are not allowed to have mining rights or mining lease rights.
9. (a) Sector: Water Transport Industry^(Note)
- (b) Legal Source or Authority: Ship Law (Law No. 46, 1899)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: In accordance with the Ship Law (Law No. 46, 1899), the Japanese nationality shall be given to a ship whose owner is a natural person with Japanese nationality, or a legal person established under Japanese law, with all representatives ("daihyosha") and not less than two-thirds of executives administering the affairs of the legal person ("gyomu-wo-shikkosuru-yakuin") having Japanese nationality. This law prevents ships not flying the Japanese flag from entering Japanese ports which are not open to foreign commerce and from carrying cargoes or passengers between Japanese ports.

Note: Water Transport Industry refers to
Oceangoing/Seagoing Transport, Coastwise Transport
(i.e. maritime transport between ports in Japan),
Inland Water Transport and Ship Leasing Industry.

10. (a) Sector: Telecommunications Industry
- (b) Legal Source or Authority: Law concerning Nippon Telegraph and Telephone Corporation, etc. (Law No. 85, 1984)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:
- (i) Nippon Telegraph and Telephone Corporation (NTT) shall not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly and/or indirectly held by the person set forth in item (A) through (C) below reaches or exceeds one third:
 - (A) a person who does not have Japanese nationality;
 - (B) a foreign government or its representative; or
 - (C) a foreign legal person or association;
 - (ii) NTT shall always hold all shares of the Regional Companies; and
 - (iii) any person who does not have Japanese nationality shall not assume the office of director or auditor of NTT and the Regional Companies.
11. (a) Sector: Financial Services
- (b) Legal Source or Authority: Deposit Insurance Law (Law No. 34, 1971)
- (c) Relevant Obligation: National Treatment (Article 73)

- (d) Description: The deposit insurance system only covers financial institutions which have their head offices within the jurisdiction of Japan.
- 12.
- (a) Sector: Investment in specific sectors
 - (b) Legal Source or Authority: N/A
 - (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
 - (d) Description: National treatment and prohibition of performance requirements shall not apply to the following sectors:
 - Fisheries within the territorial sea, internal waters and Exclusive Economic Zones
 - Explosive Manufacturing Industry
 - Nuclear Energy Industry
 - Aircraft Industry
 - Arms Industry
 - Space Industry
 - Electric Utility Industry, Gas Utility Industry
 - Broadcasting Industry.