***ANNEXURE***

# India Japan Business Leaders Forum (IJBLF)

## *Industry Issues highlighted at the Forum meeting held on October 29, 2018 at Tokyo*

Keidanren
Policy & Action

Confederation of Indian Industry

# Issues faced by Japanese Companies Operating in India

Areas in need of further improvement despite progress already observed

- Implementation of the Goods and Services Tax and the E-Way Bill
  - In July 2017, India implemented its Goods and Services Tax (GST), which subsumed more than 15 types of indirect taxes that vary by state. This has streamlined India's tax system and facilitated dramatic savings in business costs and time. Additionally, steps have been taken to revise certain GST tax rates in light of existing circumstances and streamline filing procedures.
  - However, several issues remain. Three types of GSTs have been placed in force (central, state, and integrated GSTs); businesses are required to follow tax registration procedures in each state; GST filing procedures must be followed for each transaction invoice; and taxpayers and recipients both need to register for GST tax filing purposes and establish links through the Goods and Services Tax Network (GSTN) portal (for reconciliation purposes). We urge that India integrate the three types of GSTs, further streamline procedures by filing a tax return for multiple invoices issued during a certain period of time, and implement thorough procedures for swift processing of tax refunds.
  - Another issue is that airport lounge usage fees, excess baggage fees, and other fees associated with airline tickets are subject to the GST. If these fees are levied outside India, the tax relationships may be unclear and a source of confusion. Starting with such cases, we urge that India further develop its systems for the handling of international transactions that are not covered by GST provisions. In addition, there is concern that the GST will adversely impact the market popularity of hybrid vehicles (HVs) because HVs are subject to a tax rate of 43 percent, the same rate applied to luxury vehicles, whereas the rate applied to electric vehicles (EVs) is only 12 percent. Furthermore, digital cameras are subject to an exceptionally high tax rate of 28 percent whereas the tax rate on smartphones is 12 percent and that on other IT equipment is 18 percent. Rational rates that are more compliant with the Digital India plan should be established. Although cameras tend to be associated with the

expensive models that professional photographers use at weddings and other events, 80 percent of camera demand in India is for entry-level or consumer-class models. The high tax rate is an obstacle to the expansion of the camera market as a whole and should be lowered from 28 percent to 18 percent.

- The E-Way Bill (an electronic waybill for movement of goods) that the Indian government introduced at the same time as the GST will facilitate extensive streamlining of mandatory examination procedures for goods in transit across state borders, and can be expected to improve the cost-effectiveness of logistics operations within India.
- However, we urge steps to remedy the cross-border administrative processes that remained unchanged after implementation of the E-way Bill framework, portal malfunctions, and flaws observed in the forms for data entry, and call for the streamlining and optimization of processes involving the management of transport vehicle license registration and expiration dates.

- <u>Implementation of the nuclear cooperation agreement</u>
  - The Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the Governments of Japan and India was signed in November 2016 and placed into force in July 2017. The implementation of this agreement facilitates transfers of nuclear reactor vessels and other nuclear power-related equipment, and technologies from Japan and thus can be expected to pave the way for the construction of new nuclear power stations through cooperation between Japan and India.
  - However, in 2016 India ratified the Convention on Supplementary Compensation for Nuclear Damage (CSC), which places a heavier burden of liability on electric utilities. We accordingly hold out hope that India will quickly revise its Nuclear Liability Act, which assigns a measure of liability to manufacturers [of nuclear power equipment], and harmonize its domestic laws with the CSC.

- <u>Establishment of the Insolvency and Bankruptcy Code and NCLT</u>
  - The Insolvency and Bankruptcy Code, 2016 that India established and placed into force in 2016 and amended by decree in 2017, together with insolvency and

liquidation proceedings held by the National Company Law Tribunal (NCLT), a special institution for the implementation of bankruptcy procedures, have enabled India to improve the health of its market as a whole through the withdrawal of financially distressed companies from the marketplace, and can be expected to help the country make continued progress toward resolving the issue with nonperforming loans and avert a string of bankruptcies by banking institutions as a consequence of that issue.

- Employee Provident Fund (EPF) refunds due to India-Japan Social Security Agreement coming into force
  - The India-Japan Social Security Agreement that came into force in October 2016 set the stage for elimination of the double burden of social insurance premiums, leading to cost reductions. Furthermore, amendments promulgated in September 2017 allowed for refunds of social security premiums already paid.
  - However, refund procedures are in some cases stalled because the examiners in charge may not be familiar with them. For that reason, we urge that the authorities foster improved familiarity with the new system with guidance or instructions provided through their websites.

- Introduction of Visa-on-arrival Scheme
  - Beginning in April 2017, Japanese visitors to India may be eligible for a Visa on Arrival (VOA) provided they meet certain conditions including the purpose (e.g., business, tourism, medical treatment) and duration of their visit (no more than 60 days). It is anticipated this will improve the conveniences for Japanese travelers that make emergency visits to India.
  - However, we urge that the new system be reliably and consistently implemented because in some cases, visa issuance counters are not always staffed with qualified officers and issuance procedures can require inordinately long periods of time.

- Online procedure for foreign resident registration (FRRO)
  - In February 2018, India introduced an online application procedure referred to as e-FRRO for foreign resident registration (FRRO), which foreign nationals are required to

apply for within 14 days after arriving in India if the duration of their stay is expected to exceed 180 days. Previously, foreign nationals were required to visit FRROs in person, the application procedure itself was complicated and lacked transparency, and the issuance of valid registration cards required inordinately lengthy waiting times. It is anticipated the launch of the online e-FRRO will streamline the registration procedure and lead to shorter waiting periods for the issuance of registration cards. We accordingly urge that it be reliably implemented.

- Implementation and administration of the Aadhaar Project
  - Aadhaar numbers are unique 12-digit numbers that India's central government issues to all Indian individuals under provisions of the Aadhaar Act 2016, which was enacted in March 2016. Banks and other financial service institutions as well cellphone service providers and other entities may use these numbers for transactions within India as unified and unique forms of personal identification. Since Aadhaar registration began in 2010, over 1 billion citizens have been registered. As of December 2017, almost all Indian nationals had received Aadhaar identification numbers. The full-scale implementation of the Aadhaar system has made it easier for citizens to open bank accounts and subscribe to cellphone services.
  - On May 12, 2017 the Indian government announced that foreign nationals need not acquire Aadhaar I.D. numbers. However, some companies have been advised by Japanese diplomatic offices overseas that Japanese nationals should also register for Aadhaar numbers in order to avoid having their bank accounts frozen. We therefore urge close cooperation by government institutions in both countries on this matter.

- Properly protecting, and ensuring the international conformity of, intellectual property rights
  - The Patent Prosecution Highway (PPH) is a framework based on mutual patent office agreements, under which an application containing claims that have been deemed patentable by the first patent office (office of earlier examination) is considered eligible to go through an accelerated examination by a second patent office (office of later examination) with a simple procedure upon the applicant's request. This framework

has been institutionalized through agreements by several countries in Asia including Japan, China, South Korea, Singapore, Malaysia, Thailand, Indonesia, the Philippines, and Vietnam. India itself should consider adopting the PPH framework at an early date in view of the potential benefits, which would include improved assessment rates, shortened waiting periods for the initial examination, and a general reduction in related costs.

- On August 22, 2018 Japan's Patent Office (JPO) and India's Department of Industrial Policy and Promotion of the Ministry of Commerce & Industry held their second review meeting on intellectual property. Following a series of efforts in coordination, both sides agreed in principle to launch a bilateral PPH on a pilot basis in the first quarter of 2019. If a PPH with India is implemented, it can be expected to boost the patent examination rate, shorten the waiting period up to the first examination, and reduce overall costs.
- From the point of application submission until a patent is finally granted, patent examiners occasionally ask that the applicant also provide information on patent applications submitted in other countries. In such instances, however, it is possible for examiners themselves to obtain that information using a dossier system for patent applications submitted to the United States Patent and Trademark Office (USPTO), European Patent Office (EPO), or Japan Patent Office (JPO). Also in some cases, it is unclear which countries' information the examiners require. Moreover, some trademark applicants have not been granted certificates of registration despite the passage of over five years from their submission and the receipt of notifications from local proxies that their examination procedures had concluded. It is anticipated implementation of the PPH will resolve these problems.
- In India, it is mandatory that patented inventions be utilized; legal provisions require that yearly reports on the status of utilization be submitted to the Patent Office. It is India's own unique system and places an inordinately heavy workload on patent holders. That system should be improved.

Items for which improvements are required

- Revisions to the Land Acquisition Act
  - The revised Land Acquisition Act (placed into force in January 2014), which concerns the acquisition of lands by the government, government-affiliated public corporations or private companies for development in the public interest, has introduced new systems including a social impact assessment procedure (with public hearings, etc.) and mandates that public-private partnerships (PPPs) and other private-related projects obtain the consent of 70–80 percent of the landowners on targeted lands (not necessary with purely government-led development projects). In some cases while these procedures were in progress, project schedules have been delayed in their entirety as a result of opposition to environmental degradation from residents in neighborhoods adjacent to the affected project sites. We urge that land acquisitions and related procedures be performed with care to ensure compliance with public project schedules.
  - Although landowners were previously paid compensation equivalent to the market value of their property plus a margin of 30 percent, under the revised Land Acquisition Act, landowners in farming districts are to be compensated with an amount equivalent to two to four times the market value of their property. Furthermore, in cases where the acquisition of an entire site for industrial complex development has not been completed, provisions of the revised Act are also to be applied even to transactions involving land lots parceled before the Act was revised, and as a result, in some cases state governments demand a final price margin of 30–40 percent above the posted price for such lots. We urge that steps be taken to abolish or minimize the demands for extra price margins and establish fixed lease amounts for spaces in industrial complexes that have been filled with tenants.
  - We request that India move to facilitate land expropriations, resolve the issues surrounding land acquisitions, enact a revised Land Acquisition Act at an early date, and establish a registration framework for real estate.

- Regulating and rationalizing the tax systems and securing international conformity
  - The Dividend Distribution Tax (DDT) is a uniquely Indian tax system that levies a tax rate of 20 percent when an Indian company resolves to pay a dividend. We urge that this be replaced with a dividend withholding tax and that the effective tax rate be reduced.
  - The Black Money and Imposition of Tax Act (a law that governs the disclosure and taxation of foreign income and foreign assets) mandates that overseas representative employees disclose details about their foreign bank accounts. In light of the act's purpose, only Indian nationals with foreign assets should be subject to this Act whereas foreign nationals (representative employees, etc.) should be exempt from its requirements.
  - Japanese companies that receive royalties, etc. from Indian companies are obligated to file tax statements as foreign companies in India and undergo tax investigations every year. In view of the heavy administrative burden this poses, we believe remedial measures are warranted.
  - Provisions of the Japan-India Tax Treaty may apply when a Japanese company receives royalties from an Indian company. In such cases, the withholding tax rate is lowered from 20–35 percent to 10 percent but this is preconditioned on the acquisition of taxpayer number (PAN: permanent account number) from India's Income Tax Department. We believe these procedures should be streamlined.
  - In addition to the above, since 2016, all companies that are obligated to file tax statements in India are required to submit a Master File (the equivalent of a business summary report in Japan) regardless of their resident or nonresident status. The Master File requires the inclusion of certain information that only applies to India and is not consistent with the OECD's BEPS Action Plan 13 reporting framework for information on multinational corporations (transfer pricing documentation). We urge that action be taken to remedy this issue and that nonresidents with no permanent facilities, etc. in India be exempted from the tax return filing obligation.
  - Under Japan's Income Tax Act, it is not necessary for Japanese companies to deduct withholding taxes from payments to nonresidents for services rendered. However, the Japan-India Tax Treaty contains provisions stating to the effect that a 10 percent withholding tax shall accrue on technical service fee payments from Japan to India,

and the Japan-India Tax Treaty prevails in such matters. Due to the complexity of, and time required to complete, procedures for the collection of withholding taxes, the 10 percent withholding tax should be abolished through revisions to the Japan-India tax treaty.

- Under India's tax laws and the double taxation avoidance agreement with Japan, the TDS withholding tax rate on nonresidents' imputed income from permanent facilities is a high 40 percent (and up to 43.68 percent if surcharges and the health and education tax are added). This tax is applied not to income but to sales revenue. Although some may be refunded after corporate income tax returns have been filed, the burden of expenditure is heavy and should be eliminated.
- If the parties involved in a stock sales transaction mutually agree to a sales price based on the net asset book value or the DCF but the company whose stock is sold through that transaction owns land, structures, or certain other fixed assets, the seller will be obligated to pay a capital gains tax that reflects valuations of those assets based on methods prescribed by existing tax laws. However, because the prices set through the prescribed valuation methods for those land and building assets tend to be far removed from their actual market prices, in almost all cases the capital gains tax will be assessed against proceeds from a stock sale calculated on the basis of a sales price according to the tax laws, that is far higher than the actual sales price. This imposes a large tax burden, and the situation should be remedied.
- Regardless of the above-described rules in the tax laws for stock transaction prices, if a foreign-affiliated company sells stock in a joint-venture to an Indian company that is its partner in that joint-venture, the sales price for that transaction must be no higher than the "fair value" defined in accordance with Reserve Bank of India (RBI) guidelines. Conversely, if a foreign-affiliated company purchases stock from an Indian company, it is mandated that the price be no lower than the "fair value." Even if the parties to the stock transaction set the sales price through a contract agreement, the foreign-affiliated company still can only sell at a price that is no higher than the "fair value" regardless of the terms in the contract agreement when the agreed price exceeds the "fair value." From the foreign-affiliated company's perspective, it is only possible to sell stock assets at the "fair value" price, which potentially could be lower than the price agreed on in advance by the parties to the transaction. This should be

remedied, since it is a source of uncertainty from the standpoint of profit management when the company seeks to recover its investment, and is an obstacle to investments by foreign companies in the Indian market.

- Import duties on finished product imports of consumer goods other than automobiles are calculated on the basis of a "Maximum Retail Price" label. Import duties should be calculated on the basis of import prices through abolishing the price label scheme. It has been permitted for authorized economic operators (AEOs) to affix price labels after customs clearance somewhere in India. However, even if they apply to affix labels after customs clearance, approvals are in fact not given. That situation should be remedied.
- Based on a July 1, 2017 announcement in the government's official gazette that was aimed at providing incentives for the domestic manufacture of finished goods in India, customs tariffs were increased from zero to 10 percent on a range of specified consumer electronics goods and IT equipment including compact photo printers and ink cartridges despite their eligibility for tax-free status under the WTO Information Technology Agreement (ITA). India should apply customs tariff rates that are in harmony with international agreements.
- In the event multiple companies form a consortium to pursue a large-scale project under an Association of Persons (AOP), the consortium's transactions including those outside India may be deemed subject to unified taxation. Such taxation presents an issue for foreign companies in terms of forming consortiums and participating in Indian projects, and should be abolished.
- Many aspects of India's tax system and its administration lack transparency. In addition, different tax officers may interpret the laws differently and in some cases tax rates may be abruptly changed without notice. Steps should be taken to provide uniform interpretations of the law through improvements in the clarification of ambiguous definitions, formulate public guidelines that focus on more-concrete examples, ensure adequate time periods from the issuance of notices to the implementation of action, implement public comment periods (frameworks for the announcement of proposed statutes and laws with time provided for the broad solicitation of opinions from the general public) prior to finalizing tax increases, and in other ways improve the fairness, transparency, predictability, and consistency of the tax system.

- In view of the time required for requests for the return of service tax refunds, responses to appeals against rejection notices from the tax authorities, and follow-up court proceedings, refunds should be made on the basis of prompt decisions.

- <u>Revising the content of Master File requests by the Indian tax authorities</u>
  - To address the cross-border tax-haven strategies of multinational corporations that have grown more pronounced in recent years, the OECD Committee on Fiscal Affairs in June 2012 launched a project concerned with Base Erosion and Profit Shifting (BEPS) and in July 2013 announced its BEPS Action Plan. This Plan was submitted to the July 2013 Meeting of G20 Finance Ministers and Central Bank Governors. To gain support from the G20 nations and implement the action plan, an OECD / G20 BEPS Project was established as a framework to enable eight G20 member-nations that are not in the OECD (China, India, Russia, Argentina, Brazil, Indonesia, Saudi Arabia, and South Africa) to express their views and participate in the decision-making process together with OECD member-nations.
  - Japan has initiated work to revise the tax system in line with the BEPS Action Plan, and India on October 31, 2017 announced its finalized rules concerning Master File content.
  - India's Master File requires the reporting of detailed information on all the companies in a corporate group, including their official names and addresses. However, this information is already included in country-by-country reporting (CBCR), which makes the requirement for inclusion in the Master File redundant and illogical. Moreover, zip codes and other information not listed in the CBCR require the collection of additional information, thus creating an excessive administrative burden.
  - The Master File also requires information on the functions, assets, and risk analyses of group companies that account for at least 10 percent of consolidated sales, total assets, or income. However, the repetitive listing of this information for such Group companies should be abolished because it is already listed in the text of Group company Master Files by business category (e.g., production, sales, research and development). Furthermore, this is confidential information to which individual group companies normally do not have access, and there are strong concerns about the risk

of data breaches from Indian subsidiaries that would place this information in the hands of third parties other than the tax authorities. From the perspective of confidentiality, this situation should be rectified.

- The foregoing conceivably does not satisfy the intent of recommendations in the final BEPS report approved by the OECD-G20 international forums. Moreover, India's Master File requires the submission of many data entries in CSV format and sets limits on the number of characters in text fields without regard for differences in corporate group scale. These factors contribute to an extremely heavy clerical burden that includes the preparation of fresh documents and conversion to different formats in order to satisfy India's special requirements.
- There is significant concern that these excessive requirements will have repercussions not only in India but on the tax authorities in other countries as well. We urge that India revise its Master File requirements with a view to steadily implementing the recommendations approved under the OECD-G20 BEPS Project.

- <u>Steady progress toward the integration of labor laws</u>
  - India has multiple labor-related laws in effect state by state. In addition, different laws prescribe different definitions for the same criteria, including the minimum wage and employment contracts. This has contributed to ambiguities with inconsistencies in content. Moreover, employers are required to submit monthly reporting forms on personnel-related (pensions, social security) matters on a per-state and per-law basis.
  - Each state has its own rules regarding annual paid leave, working hours, and other matters governed by the Shops and Establishment Act. This has made it difficult for companies with business operations straddling state lines to set and implement working conditions for their employees.
  - The Indian government has plans to integrate its 44 current labor-related laws into four labor codes. The Ministry of Labour & Employment has released a draft of its Labour Code on Social Security and Welfare, which is aimed at integrating the country's Employee Provident Fund (EPF) Act, Employee State Insurance (ESI) Act, and other laws for severance payments, maternity allowances, and worker compensation. If the integrated labor codes are enacted, they can be expected to help

streamline work processes and reduce the cost associated with obtaining legal advice from attorneys and other legal professionals. However, at this stage, the Indian government has only released incomplete, draft versions and should move forward with the steady integration of its labor laws.

- Information submitted by corporate directors pursuant to provisions (on director selection and qualifications) in Companies Act 2014, one of the regulations for enforcement of Companies Act 2013
  - Directors, including nonresident directors, on the boards of Indian corporations are obligated to register information about themselves using an online reporting form. However, the requested information is extremely broad in scope and redundant in its detailed content, and the procedures involved in the reporting process are complicated.

- Ensuring the free flow of data
  - The free flow of data is a must for advances in digital innovation. In July, an expert committee of the Indian government approved a legislative bill for the protection of personal data. However, it is strongly feared this legislation could restrict the free flow of data and hinder innovation and economic growth. Data localization is at odds with the idea of an open internet; the free flow of data facilitates information access and can help prevent the digital divide. Cloud computing through the networks of data centers that have sprung up around the globe will enable companies (and startups and smaller companies in particular) to utilize the latest technologies at low cost.
  - India should recognize the importance of the flow of data and adopt initiatives for the free flow of data that are in keeping with international efforts to protect privacy and personal information.

- Encouraging infrastructure development and reforming tendering systems
  - Concerns are that underdeveloped transportation infrastructure and inadequate policies on urban traffic congestion will lead to shipping delays and errors and deteriorating product quality during transportation. More should be done to develop

basic transportation infrastructure including arterial roads, expressways, and urban loop roads, educate the public about road manners, and step up enforcement of the traffic laws.

- To increase the participation of foreign companies in infrastructure projects, India should adopt and expand a comprehensive evaluation and bidding system to properly assess project technologies and economic viability in terms not only of the price tags on new capital investments but also of project life cycle costs. Additionally, steps should be taken to rationalize and optimize the sharing of risks and roles between the public and private sectors, for example, through government guarantees and land acquisitions for PPPs; sanction single-company tenders; and facilitate tenders for complete projects.
- With regard to infrastructure projects financed with yen loans, we urge that the exchange of notes incorporate provisions that exempt Japanese companies participating in such projects from corporate and individual income taxes.
- In some cases, companies forgo participation in the bidding for a consortium-based project due to joint-and-several liability clauses that, despite the role-sharing arrangements in the Scope of Work (SOW) statements, impose monetary and other penalties on all consortium members when a single consortium-member company has failed to fulfill its project duties or obligations during the execution of a consortium-based project. This situation should be remedied.

- <u>Ensuring the clarity and consistent application of laws and systems, simplifying and speeding up of administrative procedures and securing their fairness, transparency, and predictability</u>
  - In the context of establishment and revisions to laws and systems, steps should be taken to clarify legislative intent, design legal systems commensurate with actual conditions, and clearly define and promote broader awareness of legal terminology. In some cases when revisions to laws are planned, only the sections to be revised are announced. Laws subject to revision should be uniformly published in their entirety with tables comparing the new and old versions.
  - Steps should be taken to clarify laws, their subordinate statutes, related notices, and

validity through the development of mechanisms (e.g., website-based law search engines) that allow cross searches for information on all laws and subordinate statutes.

- As a general law for administrative procedure, an “Administrative Procedures Act” should be established at the national and state levels with provisions that cover such matters as disposition upon application (establishing and publicly announcing review standards and standard processing times, and disclosing reasons in the event of rejection, etc.), adverse dispositions (setting 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.
- Complicated procedures in written documents should be simplified and legal mechanisms should be applied with consistency to avert sudden and frequent changes to the system.
- Although the progress made toward the digitization of licensing and approval procedures is to be applauded, to prevent confusion, implementation should come only after system design has reached a higher level of perfection.
  - In many cases, revised laws and systems have been implemented immediately without leaving enough time for the transition, as seen, for example, with an ordinance banning certain plastics in Maharashtra State, which was implemented without releasing any written announcements detailing the items subject to the ban.
  - In the area of customs clearance, procedures are inconsistently applied as handling can vary depending on the customs officer in charge, even if one prepares genuine invoices for hand-carried merchandise and files a customs declaration.
  - When establishing a new company, it is necessary to file a registration application with state governments under provisions of the Shops and Establishment Act in addition to the application filed with the Registrar of Companies (ROC). The Shops and Establishment Act, which establishes working conditions for employees, contains provisions for the acquisition of multiple tax registration numbers (the permanent account number, or PAN, and tax deduction [or collection] account number, or TAN) and GST registration but the exact content of

this law varies state by state. Considering that registration applications present a significant clerical burden, these procedures should be simplified.

- The transfer of controlling rights to an Indian company through acquisition of a majority interest requires state government approval. However, some states have not drawn up guidelines that specify the procedures to obtain that approval, and in some cases, the state governments do not provide a clear response or take any action.
- In some cases, applicants for property lease contracts face an extended waiting period even if they file their applications with a state government.
- In the event of regulatory revisions including updates or additions to mandatory standards, applicants are not given enough time to prepare, and during the transition stage are unable to acquire test-site certifications or develop the test report forms, application systems, or other elements of the testing and registration environment.
- Pursuant to regulatory revisions, products bearing "maximum retail price" labels with even minor changes in text content or size (e.g., with units of quantity changed from "N" to "Nos," or print size changed from 4 mm to 3 mm) are suspended from market circulation because they are deemed non-compliant with standards for novelty. However, if the labels contain appropriate and necessary information, India should be more flexible with its rules on labeling methods or ensure an adequate period of at least half a year for transitional preparations.
- To clear Indian Customs, imported products equipped with radio or wireless functionality are required to have an Equipment Type Approval (ETA) certificate from the Wireless Planning and Coordination (WPC) wing of India's Ministry of Communications. However, importers may also be required to have an Advance Import License for those items that only need an ETA by law for customs clearance. Internal government notifications on these matters are inconsistent in their content and customs procedures can vary on a case-by-case basis and lack uniformity.
- When defects are discovered in Japanese products manufactured in India, they may be exported back to the manufacturing parent company in Japan for defect analysis. However, the periods required for re-export procedures at Indian

Customs are comparatively longer than is the case for other countries. If the merchandise is repurchased by the Japanese manufacturer, customs export procedures typically required about two to three weeks; if returned to the Japanese manufacturer without consideration, the process can take from three to six months. In other countries, this procedure typically takes about one week. Customs export procedures in India should be simplified and accelerated.

- Ensuring the transparency and fulfillment of administrative contracts
  - In some cases where companies have won bids for a government public-works project, the project has been canceled as a result of political lobbying efforts aimed at the government officials. Improved transparency should be ensured through far-reaching efforts to prevent ambiguous interactions and fraud.
  - In some projects in which state governments and state-run enterprises are involved, issues with nonpayment for construction work and payment of extra costs remain unresolved. These are serious problems that cause foreign companies concern about the uncertainties associated with doing business in India, and should be resolved at an early date.
  - Efforts to deregulate the power industry in India have not made headway. In some cases, public power utilities have exploited their position as monopoly suppliers to force consumers of high-tension power to purchase power receiving/distribution equipment to be used by the power company and the land required for its installation, and then compel them to donate this infrastructure to the power company after the installation work is complete. In other cases, these requirements have been added as *ex post facto* terms and conditions to existing supply contracts. If ultimately treated as public power utility assets, then these facilities should be accounted for as power utility expenses after the installation work.
  - The price structure for the supply of power comprises a fixed component and a variable component that is proportional to the amount of power consumed. However, the fixed component accounts for a higher share of the total price. Furthermore, once a client enters into a power contract, the terms and conditions may not be changed for a specific period (for example, two years). After they have signed their contract, users

are required to pay no less than 85 percent of the fixed component even if they do not use any power. This is inconvenient for industrial users that do not yet consume a steady amount of power during the startup phase of their manufacturing operations. The variable component should account for a larger share of the total price charged for power and the period during which contracts cannot be altered should be shortened.

- Since the minimum fee for the supply of water is based on the pipe diameter of the line supplying the client's site, the fee will not be halved even if the client cuts water consumption by half. Wastewater fees are assessed on the basis of water used, not the volume of wastewater itself. Consequently, water users enjoy no monetary benefit even if they reduce their wastewater emissions as an environmental measure. Steps should be taken to transition to a rate structure that lowers fees charged in response to reductions in consumed volume.

- <u>Rationalizing industrial standards</u>
  - Currently in India, test and inspection data (in CB Reports: certificates of compliance that list the results of electrical equipment safety tests in compliance with IEC standards) are used only for certain electronic products. However, for televisions, projectors, smartphones, rechargeable batteries, and other products subject to the Compulsory Registration Order under India's equipment registration regime, inspections of actual product samples must be performed by a designated testing agency in India. This requires a longer period of time for assessment and testing compared to the situation in other countries. As a participating nation 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. Another issue is that designated testing agencies sometimes suddenly suspend their operations for audits by the authorities, which can have an impact on products then in the process of being tested. These facilities should have more flexibility so that product testing already under way can be continued without interruption. Also, when product standards are updated, they are applied retrospectively to existing product models that have already been approved, thus requiring an enormous amount of re-approvals. These issues should be

remedied.

- In certain cases under regulations other than the Compulsory Registration Order, the Indian government limits testing for compliance with technical regulations to government-designated testing facilities inside India. However, it should also allow testing without regard to facility location or affiliation if the facility, such as a testing site of a manufacturer, is one that has been approved under international standards such as ISO 17025 (General requirements for the competence of testing and calibration laboratories).
- Under equipment registration regulations, product registrations must be performed on per-factory basis. It is mandatory that product registrations be performed for each factory even if the products in question are identical. The costs associated with local testing and market audits are a burden for manufacturers. India should follow the example of other countries and have registrations performed on a per-manufacturer or per-brand-owner basis.
- Moreover, under the equipment registration regime, as soon as a new product has been registered, information about that product will be posted on the government authority's website prior to its market release. This information should not be publicly disclosed for a certain period of time.
- Another issue in addition to the above is that used and unregistered products of questionable safety have been flowing into the Indian market despite the fact that the registration regime also covers used products. In view of the safety concerns, the relevant regulations should be appropriately applied.
- Regulations governing the display of information on product electrical safety, environmental compliance, and pricing on "maximum retail price" labels have been strengthened, thus facilitating the detection of illegal products. Despite this, Indian authorities have not yet appropriately cracked down on illegal products even after placing these stronger regulations into effect. India should monitor malicious violations and strictly enforce the laws to protect consumers from illegal goods.

- <u>Rationalizing waste regulations</u>
  - Under the Plastic Waste Management regulations, plastic materials utilized in the

packaging for electric and electronic goods must be pre-registered and display their registration numbers. However, some plastics cannot be readily utilized as packaging materials because they are also subject to standards for dyes and pigments applied to plastics used for pharmaceutical products. Furthermore packaging materials that are less than 50 μm thick and packaging with multi-layered structure are prohibited. These requirements should be revised with more realistic and reasonable content that reflects the overall impact on the environment.

- Individual Indian states also have their own, independently administered plastic packaging regulations, a factor that had caused confusion. Steps should be taken to improve the consistency of the Plastic Waste Management regulations at the federal level with the regulatory requirements and scopes of application at the state level and administer these regulations in a realistic, rational, and uniform manner.
- Starting in May 2017, India made it mandatory under its E-waste management regulations that ultimately 70 percent of certain electric and electronic products previously sold on the market be recovered and recycled, but it does not as yet have a framework in place for that purpose. Although contracts with commercial waste collection businesses are required, as necessary, manufacturers have been saddled with the entire burden of expensive collection costs. A more-efficient framework should be developed by reference to the approaches taken in Europe, where local governments handle the collection and recycling operations and manufacturers bear the costs, or in Japan where users cover the recycling costs at the time of purchase.

- <u>Unrestricted fund transfers</u>
  - Companies that transfer sales revenue abroad are obligated by the Reserve Bank of India (RBI), the central bank, to file annual financial statements. Companies operating as branches in India should be exempted from the requirement to prepare domestic financial statements, and should be allowed to transfer funds between head offices and branches without restriction.
  - Companies that transfer funds abroad from India are expected to have a tax residency certificate (TRC) issued from time to time. However, only periods up to the date of a request for that purpose will be recognized as the period of validity that should be included on the application when requesting issuance of said certificate from the tax

office. This consequently forces applicants to visit their tax office to request and receive a TRC every time they transfer funds, and thus poses a major burden. In connection with providing a TRC when executing a fund transfer, Indonesia and Italy have tax treaties that allow written oaths of residence by taxpayers themselves to be treated as effective certificate. India should adopt a similar approach.

- Financial deregulation
  - A market for Priority Sector Lending Certificates (PSLCs) has been created under India's Priority Sector Lending (PSL) regulations, which are aimed at strengthening lending to farming businesses, micro enterprises, and other priority sectors. Although the value of transactions on the PSLC market has grown and information disclosure has made progress, commission rates should be lowered and system reforms should be made to facilitate participation in this market by foreign banks. The possibility that sector-by-sector targets may be integrated into the PSL regulations will be a matter of future concern.
  - In India, external commercial borrowing (ECB) is an effective means of procuring funds. Regulatory amendments made in November 2015 extended the loan term for infrastructure-related companies (to an average term of at least 10 years), and mandated that non-bank loans be made in Indian rupees. Regulatory amendments in March 2016 allowed foreign currency-denominated loans of five years or more to infrastructure-related companies and infrastructure-related non-bank institutions, albeit under the mandatory condition of 100% foreign-exchange risk hedging. These regulations should be reviewed and revised.
  - When Indian subsidiaries of the same parent company engage in group finance, their fund transactions with each other are treated as indirect, deemed dividends to the parent and are subject to a withholding tax rate of 30 percent. Additionally, group finance involving the transfer of funds from a foreign parent to its Indian subsidiaries is subject to a "minimum five-year rule" that has become a barrier to improvements in the efficiency of intra-group financing. These systems should be abolished or relaxed.

- Establishment of an automotive panel
  - Currently, seven different Indian government ministries and agencies are involved with automobile-related laws, including traffic laws and regulations on fuel economy and exhaust gas emissions. However, inter-office coordination on these laws and regulations remains inadequate. Consequently, notifications tend to be inconsistent or contradictory in content; directives to adopt or implement certain actions may be issued with deadlines that are technically impossible to meet; and government policy on regulatory matters may quickly change. These problems have been a source of major confusion within the automotive industry.
  - India needs a foundation for the development of legal system that keep the long-range perspectives of the automotive industry in mind. To that end, it should establish a public-private panel for collaboration between its automobile manufacturers' association and relevant government ministries and agencies.

- Labeling backed by scientific evidence
  - Proposed food labeling regulations issued in April 2018 would be unfair to certain product categories because they mandate, for instance, that food flavorings be additionally labeled with "Not recommended for pregnant women" warnings and impose labeling requirements that lack adequate scientific evidence. India should adopt suitable labeling regulations that are supported by scientific evidence.

- Flexible handling of applications for construction permits
  - Currently in India, contractors are required to obtain a construction permit when they plan to implement a project such as construction of a new factory. However, in several states, a permit application will not be accepted if the structure to be built does not cover at least one-sixth of the project site's total area. In an era of rising land prices, it is understandable that the government wants to effectively utilize available land and attract projects that will build factories and create more jobs. However, to companies that are purchasing land with an eye to future expansions in operating scale, a rule that rejects construction permit applications unless the project builds structures that cover no less than one-sixth of a building site's total area at the initial investment

stage significantly compromises the freedom of their corporate activity. Construction permits for large-scale projects with long-term plans should be handled with more flexibility, for example, through the establishment of escape clauses.

- Developing a foundation for the provision of financing at long-term fixed rates
  - As interest rates trend upward worldwide, more and more companies are exploring fund procurements at long-term fixed rates to limit their exposure to the risk of rising interest rates.
  - Under regulations in effect in India, interbank interest rate swap transactions are prohibited unless they are consistent with the fund amounts and durations prescribed by the Clearing Corporation of India, Ltd. (CCIL). India's market for long-term interest rate swaps should be updated to enable banks to flexibly set the interbank swap fund amounts and durations.
  - To facilitate and support the provision of long-term financing, foreign banks should be allowed to issue onshore and offshore securities denominated in Indian rupees, and the scope of eligibility for the issuance of securities aimed at raising funds for infrastructure-oriented projects should be extended to more business sectors.

- Measures against air pollution
  - According to air-pollution data released by the World Health Organization in 2018, 14 of the 20 cities worldwide with the worst levels of air pollution are located in India. Air pollution is a serious problem not only for foreign nationals but also for the Indian citizens that live in these cities, and viable remedial measures should be implemented.

## Issues faced by Indian Companies Seeking Business in Japan

### A) Cross-cutting issues

- **Certificate of Eligibility:** Over the years, Indian companies have been facing problems with regard to requirements on Certificate of Eligibility (COE) and Visa applications. There is a need to improve Japanese procedures and hasten the CoE process in certain instances.

  Average time taken for CoE processing for individual applicants ranges between 6-7 weeks and for dependent applications it extends between 2-3 months based on the number of dependents. Any reduction in process time would be welcome.

  **However, CoE for Short term deputation / assignment poses a particular challenge since IT companies would need to plan much ahead considering the 6-7 weeks processing time**. This defeats the purpose of business exigency for our IT companies.

  Small IT companies (but they may be big companies in India or any other market) have witnessed processing time increase from average of 4-6 weeks to 9-12weeks. Even then they are not sure about specific time period. It is apparently affecting firms with a threshold of below JPY 15M in employment taxes. This delay impacts most of the Indian companies operating in Japan, and adversely affects their ability to competitively & efficiently engage in this market.

  A digital approach like uploading scanned documents similar to visa processing in some other developed countries could be considered. There is much apprehension in transiting original documents (Graduation certificate, Mark sheets, Marriage and Birth certificates) among applicants as mandated in the current process. They are concerned over loss in transit, damage etc. **A digitized documentation procedure would be welcomed**.

- Indian business companies, especially those, which are trying to enter the Japanese market often face difficulties in obtaining the “certificate of eligibility” which often takes anywhere between 2-3 months. This also poses problems for IT companies particularly for professionals coming on short-term assignments.

  This issue must be addressed. Long-term multiple-entry visas for Indian business community should also be considered as also simpler documentation requirements.

- Under **Authorized Economic Operator (AEO)** program, India has a Mutual Recognition Agreement (MRA) only with South Korea and Taiwan. Both India and Japan could consider entering into an MRA considering both are signatories to the Trade facilitation Agreeement (TFA) under WTO. This will fast track and streamline Customs clearance procedures for AEO holders.

- **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% 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 the 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 for the Indian pharmaceutical sector.

- **Realise market access in fields such as IT, IT-enabled services, and professional services:** India's vibrant IT software services industry faces challenges while operating in Japan due to lack of an 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 a high level of customisation 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.

- **Introduce a mutual recognition agreement for services professionals, such as, lawyers, accountants and nurses:** In fact, despite a specific provision in CEPA, there has been no progress in negotiation of MRA on nursing sector. The Japanese side has requested from the Indian side the details of basic education and qualification system of the nurses in India to determine whether it matches the Japanese standards. The relevant Sub Committee established under CEPA needs to meet early to take this matter forward.

- **The Withholding Tax of 10% on dividend, royalty and technical service fees should be eliminated:** As per domestic laws in Japan, there is no With-holding Tax on payments by Japanese companies to non–resident entities towards service fees. However, as per the 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 beneficial, are applied. However, in the 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.

- **Remove non-tariff barriers:** India-Japan trade is hampered by the tariff and non-tariff barriers imposed by both countries. Japan has placed import prohibitions and

quantitative restrictions on imports from India, such as, on fish and silk items. Food, silk, leather, IT and health being some of the most affected sectors.

- **Air connectivity:** There is a need to increase the number of direct flights between major Indian cities like Bengaluru, Pune, Hyderabad, Chennai and Cochin and key cities in Japan.

- **School Education:** There is only a limited number of international schools in Japan making it difficult for Indian employees to work in Japan on long-term assignments, especially when the onsite postings are in remote locations.

- **Dispatch Law:** Changes in Dispatch Law (Haken law) of eliminating the specified worker dispatch license has led to all service providers getting the general worker dispatch license, which is designed for staffing companies. In an onsite-offshore model, Indian companies often dispatch workers to an onsite location 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:** The EPA certificate is the basic requirement for availing the concessional Customs Duty benefits in respect of imports from Japan. There is a general reluctance on the part of Japanese suppliers to provide the certificate to Indian buyers. The procedure for obtaining the certificate is very cumbersome and so in many cases, Indian importers are not able to avail the benefits envisaged under the CEPA.

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

similar challenge exists at the level of the regulatory authorities 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 streamline the trade procedures.

- **Auto Parts:** Certain auto parts under Tariff like 870830(Brakes), 870850 (Axles), 870880 (Suspension systems), 870891(Radiators), 870893(Clutches), 870895 (Airbags), 870899 (Others) are not covered under CEPA. However most of these Tariff lines are covered in ASEAN FTA. Inclusion of these Tariff lines will help and improve cost competitiveness of the product. Win-win situation for both the parties in sourcing same parts at competitive prices.

- **External Commercial Borrowings:** When an Indian JV company (in logistics infrastructure sector) where the majority shareholding of over 50% is held by a Japanese company raises funds (ECB) from the Japanese shareholder (JV partner), RBI guidelines stipulate that it can only be raised in Indian Rupees and the interest rate should depend upon market conditions.

  The Japanese transfer pricing regulation does not allow Japanese companies to extend a shareholder's loan to a majority owned JV at an interest rate lower than the prevailing market rate in India.

  It is desired that Japanese company should be able to extend debt at a rate lower than the market rate in India because extension of a debt at a lower rate (than the market) will be compensated by a higher profit to the JV partner out of the bottom line. Besides, RBI / tax authorities in India do not have any problem with the rate

as long as it is lower than the prevailing market rate.

## B) Sectoral Issues

- **Pharmaceutical Sector**

**Lack of innovation premium:** In the 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 the 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 the biosimilars and the innovator. For example, pricing discounts for biosimilars have been 25-30% as seen in EU5 countries. In the Nordic countries, where governments have promoted the use of biosimilars, the markets have 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 previsions:** 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.

- **Agri and Food Processing**

**High tariff for egg albumin, whole egg powder, egg yolk powder:** In these three items, concessions given by Japan to India had been neutralized as in subsequent FTA's Japan gave greater concessions to competing countries such as Mexico which has been given zero tariff. The Indian side has sought tariff reductions at par for these items to provide a level playing field and not diluting the competitive advantage intended for India under the CEPA.

In case of other marine products like shrimps, mackerel, cuttle fish and other fishes, the tariff rates for imports from India are higher in comparison to its competitors including Vietnam. India has requested for reviewing tariffs for these items.

**Export of Mangoes to Japan:** The mandatory oversight by a Japanese Plant Quarantine Inspector of the Vapour Heat Treatment facilities for exporting mangoes from India to Japan, should be entrusted to India's National Plant Protection Organization (NPPO) as done by other importing countries, since the current system is costly and on occasion resulted in the loss of export opportunities if the Japanese inspector arrived late in the mango season.

**Inspection of Indian farmed shrimps and banned antibiotic residue:** Currently shrimp exports from India to Japan were subject to 100% inspection by Japanese authorities for antibiotic residue, but of the two categories of prawns exported, no detection of antibiotic residue had been found in Black Tiger prawns during the last 3 years. Therefore the Black Tiger prawns be separated from Vannamei prawns, and that the Japanese authorities reduce the level of inspection for the former. Also the wild shrimp be separated from cultured shrimps in terms of inspection.

**Export of Surmai Fish:** In the case of export of surmai fish, the use of an imported preservative has led to the fish losing tariff benefits under CEPA. 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.

- **Information Technology**

The size of IT services market in Japan is more than US$ 125 billion. The Indian IT firms has less than 2% share despite being present in Japan for over a decade. The Keiretsu model in the IT services market in Japan makes it difficult for Indian IT firms to directly approach customers. Under this model, only the top tier companies, such as Fujitsu, NEC and Hitachi work as partners with the clients and then, outsource to various small and mid-size providers. As a result, Indian companies often end up as tertiary service providers despite their competitive

strengths in this sector. Public sector outsourcing to foreign companies is also negligible, which also limits market access to Indian IT companies.

Entry of Indian IT companies will help Japanese business to improve their IT systems and thereby their capacity to deliver. Similarly cooperation in pharmaceutical sector will help Japan meet its own targets for generic medicines and contain health care costs.

- **Insurance Sector**

The local Japanese and foreign insurance companies are treated on a different footing even if the nature of services offered is not different. Product approvals for foreign insurance companies also take much longer time than compared to the time frame for local companies. The regulator FSAJ only consults the General Insurance Organization of Japan (GIOJ), an organization of local insurance companies, on various matters, but not foreign insurance companies.