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# Doing Business in India – A Perspective from Japan

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India and Japan share a long history. Buddhism, which was born in India, travelled to Japan around the 6th century. The first major interaction between Japan and India seems to have been Japanese assistance to Shri Subhash Chandra Bose in the fight for Indian independence (1943-45). Post WWII, Japan and India signed a peace treaty and established diplomatic relations on 28th April, 1952. Since then, there have been interactions between Japan and India at various levels, which have increased in the last couple of decades.

## JAPANESE INVESTMENT INTO INDIA

For the third consecutive year, India has been ranked as the most attractive investment destination in the latest survey of Japanese manufacturing companies, conducted by Japan Bank for International Cooperation (“JBIC”). The top response for India being considered as promising was “Future growth potential of local market”<sup>2</sup>.

According to information available on the web page of the Embassy of India, Tokyo, Japan, Japanese FDI in India has increased in recent years. In terms

## BILATERAL ECONOMIC RELATIONS<sup>1</sup>

The following data provides an idea of the volume of economic relations between the two countries.

### Japan-India Trade (Japanese Yen: billion)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Trade from India to Japan	352	472	491	544	348	499	543	559	690	739	589
Trade from Japan to India	388	518	723	819	591	792	882	845	839	861	981

(source: Japanese government documents)

### Direct Investment from Japan (Japanese Yen: billion)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Direct Investment from Japan	29.8	59.7	178	543	344	241	181	223	210	219	289

(source: Japanese government documents)

of cumulative FDI inflows into India, Japan is India's fourth largest source of FDI. Japanese FDI in India grew exponentially from US\$139 million in 2004 to an all time high of US\$5,551 million in 2008 due to mega deals, particularly the acquisition of Ranbaxy by Daiichi Sankyo. In the last two years, Japanese FDI into India increased from US\$ 1.72 billion in 2013-14 to US\$2.61 billion in 2015-16. The amount of Japan's cumulative investment in India since April 2000 to March 2016 has been US\$ 20.966 billion, which is nearly 7 per cent of India's overall FDI during this period. Japanese FDI into India has mainly been in the automobile, electrical equipment, telecommunications, chemical and pharmaceutical sectors.<sup>3</sup>

Year	Japanese FDI in India (million US\$)	% Change
2008	5,551	268.6
2009	3,664	(-) 34.0
2010-11	2,864	(-) 21.8
2011-12	2,326	(-) 18.8
2012-13	2,786	19.8
2013-14	1,718	(-) 38.36
2014-15	2,084	21.3
2015-16	2,614	25.4

According to information available on the web page of the Embassy of India, Tokyo, Japan, the number of Japanese affiliated companies in India has grown significantly in recent years. As of March 2016, there were 1,209 Japanese companies that are registered in India, an increase of 137 companies (13%) compared to 2013. These companies had 3,961 business establishments that are operating in India, which is an increase of 1,419 establishments (56%) compared to 2013<sup>4</sup>.

According to JETRO's press release:<sup>5</sup> the total number of Japanese companies registered in India, as of October 2016, is 1,305; the total number of Japanese business establishments in India, as of October 2016, is 4,590; over the last one year, the number of companies has increased by 76 (6% growth) as compared to 1,229, as of October 2015; and, similarly, the number of establishments has increased by 173 (3% growth) as compared to 4,417, as of October 2015.

## INDIA AN ATTRACTIVE DESTINATION

India is one of the most attractive investment destinations because of various reasons including stable government, rule of law (albeit slow), big consumer class coupled with a rapidly growing middle income class, and a large literate young population. There could not be a better source to confirm this than the United Nations Commission on Trade and Development ("UNCTAD") World Investment Report 2016<sup>6</sup>, wherein India ranks as the 3rd most prospective top destination (after the United States of America and China) by multinational corporations. Thus, the attractiveness of India is beyond doubt.

The interaction between Japan and India on the social-political as well as the economic front is, one may say, recent, unlike India's long interaction with Russia, UK (and other parts of Europe) and the United States. However, the amiable relationship between the two countries and the past economic and cultural association are strong points in the Japan-India relationship. Both countries complement and supplement each other. Japan is a technology rich country with superior management and other techniques, but is concerned about the issues of availability of manpower and is facing a population decline. Japan needs to invest outside in order to maintain its growth momentum. India is rich with natural resources but short of technology, management techniques and lastly, capital. This presents a unique opportunity for both countries to come together for mutual benefit not only in the economic field but also for geo-political reasons.

## JAPANESE INVESTMENTS INTO INDIA

If one were to consider the sectors where Japanese investment has happened in India it is apparent that investment is spread across traditional brick and mortar businesses to new age industries comprising IT based and E-commerce. Not only have Suzuki and SoftBank made investments into India, but there have been other successful Japanese investments such as those by Honda, Hitachi, Nissan, Toyota, Daikin, Eisai, Meiji Seika Pharma, Nippon Life, Sompo Japan Nipponkoa, Bank of Tokyo Mitsubishi UFJ, Mizuho, Sumitomo Mitsui, Mitsui & Co., Sumitomo Chemicals, Zuken Inc. and BANDAI NAMCO, to name a few.

The share of Japan in overall foreign investment in India is 7% as per the Government of India statistics for the period April 2013 to March 2016<sup>7</sup>. According to the same statistics,<sup>8</sup> Mauritius is the front runner with a 33% share. Much of the investment from the United States of America is routed through Mauritius for tax efficiency. Consider this with the fact that Japanese investors are allocating more capital to Southeast Asia. FDI flows to the ASEAN-6 countries (Singapore, Thailand, Malaysia, Indonesia, Philippines and Vietnam) have averaged US\$20 billion per year for the past five years (except for 2012 when investment in Thailand fell sharply after severe floods)<sup>9</sup>. Compare this with the US\$2.61 billion that Japan invested in India in 2015-16. This means that there is still a huge potential for increasing Japan's investments in India, which needs to be utilized fully.

#### CAN INDIA ATTRACT MORE JAPANESE INVESTMENT AND WHAT NEEDS TO BE DONE?

India can attract a sizeable Japanese investment. An individual Japanese investment is more sizeable compared to other country investments. Further, the investment outlook tends to be more long term. Apart from technology, investment by Japanese companies brings the famous Japanese work cul-

## The question one often hears back in India is what can be done to increase the flow of Japanese investment into India.

ture, way of living and other aspects of Japanese culture. In a nutshell, it is a win-win situation for India.

The question one often hears back in India is what can be done to increase the flow of Japanese investment into India. It is a difficult question and the authors feel that there is no one answer. Before attempting to answer the question, it would be useful to have a broad understanding of Japan and how it

compares with India. Unlike Europe and the United States of America, Indian interaction has been less with Japan.

A brief comparison of the Indian and Japanese environment follows (see chart on next page.) (Some may feel that the following chart is, to some extent, very broad. We believe that, for the purpose of comparison, the chart would be useful – however, at the same time, please bear in mind that this chart may not always be applicable to any and all cases.)

Thus, there is wide diversity in India. India is a diverse nation in many respects. When compared to this, Japan is not diverse.

It would be useful to understand some of the key focus areas for Indian parties to work upon to attract an even higher number of Japanese investments. The readers may note that the following is a high-level summary and may not necessarily apply to every case.

#### 1. Time management

Two aspects immediately come to mind, first the unrealistic business expectations of Indian promoters, and second is lack of detailed planning and lengthy negotiations. The general view outside India is that a lot of time is spent on avoidable negotiations. To provide an example to help people back in India to understand the Japanese sensitivity one can consider the fact that the annual average delay for the Shinkansen (bullet train) is 0.9 minutes per operational train (FY2013, including delays due to uncontrollable causes such as natural disasters)<sup>13</sup>. Thus, time is money and not understanding the way business is done in matured markets like Japan can be a serious hindrance to business growth. At the same time, readers may note that the players from matured markets like Japan are understanding of the difficulties/bottlenecks faced by an emerging market player like India. Therefore, a realistic and fair understanding about the entire process provided to the Japanese counterparty in the initial stage would help the counterparty to anticipate and plan for it.

#### 2. Predictable regulatory framework and time bound approval mechanism

The Indian regulatory framework is evolving and at times has been a bit ambivalent. Be it the constant

## A BRIEF COMPARISON OF THE INDIAN AND JAPANESE ENVIRONMENT

### INDIA

India is a subcontinent.

The Indian subcontinent has been subject to repeated invasion and foreign rule.

The current population of India is approximately 1.33 billion based on the latest United Nations estimates. This population is equivalent to 17.86% of the total world population. 32.8 % of the population is urban. The median age in India is 26.9 years<sup>10</sup>.

Adult literacy rate is 74.04% with male literacy at 82.14% and female literacy at 65.46% as per the 2011 Census<sup>12</sup>.

India is a federal union comprising 29 states and 7 union territories. The states and union territories are further subdivided into districts and further into smaller administrative divisions. There is a parliament at the Centre in Delhi and similar parliaments for each state, which are further sub-divided in to smaller administrative structures called Districts. Each District has their administrative capital. As of 2016 there are a total of 707 districts in India.

Distributed and decentralized administration.

The Indian Constitution lists 22 languages with numerous dialects.

The Indian subcontinent has different climate and topography depending upon the region, ranging from desert, snow, tropical and dry climate.

Indian business culture (and to an extent social culture) is relatively informal. The business culture, recently, is developing to be much closer to the American business culture.

Leadership or top driven.

### JAPAN

Japan is an archipelago, an island nation.

Japan has never been under foreign rule except the Allied occupation during 1945-1952.

The current population of Japan is approximately 126 million based on the latest United Nations estimates. It is equivalent to 1.68% of the total world population. The median age in Japan is 46.9 years<sup>11</sup>.

Adult literacy rate is almost 100%.

There is no concept of states in Japan, and therefore there are only the central Japanese government and local or municipal governments (such as Tokyo metropolitan governments and other prefectures, and cities, wards, towns and villages). Some of the local and municipal governments such as Tokyo metropolitan government are important, and local or municipal governments have their governors/mayors and Assembly or council; however, the central Japanese government and the Diet are quite important.

Although local governments' autonomy has been paid attention to, relatively, there is unified administrative structure.

The Japanese Constitution is described in Japanese only.

Japan has four seasons which are relatively uniform.

Relatively formal and hierarchical culture, both social as well as business; however, depending on the time and place, this may be informal. Formality is observed by persons in Japan according to the relevant situation.

Said to be consensus driven; however, depending on the place or situation, leadership or top driven.

clarifications to the Consolidated Foreign Direct Investment Policy (some of which are retrospective in effect) by both the Government of India and the Reserve Bank of India, or the amendments/clarifications to the Income Tax Act, these make the international sophisticated investor like the Japanese investor uncomfortable. From an administration of policy perspective, if something has not been included or is not clear, then the risk should not be passed on to the business community by making the clarifications effective retrospectively. Also, there is a general perception that the administration of the regulatory and legal framework by various governmental authorities has not been uniform. We would like to add here that recently there have been lot of efforts by the Central and State Governments for addressing this issue, which is a good development and hope that the efforts are accelerated.

### **3. Predictable tax system**

The Indian direct and indirect tax system needs overhaul. Aggressive tax policing by the authorities have led to delays and litigation. The enforcement of the GST (replacing the Central and State Sales Tax and Value Added Tax) later this year would alleviate the concerns to an extent. But without a proper and efficient administration of the laws the exercise would not be complete.

### **4. Fast and effective dispute redressal mechanism**

The courts and alternative dispute redressal mechanism also needs overhaul. Making massive investment in the soft and hard infrastructure by the Central and State Governments coupled with initiating stringent action against parties or their advisors who cause delays (like imposing exemplary costs) would be required.

### **5. Ease of obtaining and maintaining business licenses**

The Central and State Governments need to have a re-look at the laws and the rules with a view to ensuring that there is clarity on the documentation process whilst applying for licenses as well as expedite the approval process. During the tenure of the license compliance requirements and processes need to be made business friendly. Recently, there have been some measures by the central government

followed by some State Governments; however, we feel that this process needs to be accelerated.

### **6. Awareness about India in Japan**

Lastly, the authors would like to suggest a massive initiative from the Central Government (with active participation from the State Governments) to make people in India aware of Japan, its culture, ways of doing business, climate and the general way of life in Japan. Simultaneously, they should also initiate programs with the Japanese Government to increase awareness in Japan of India and the Indian way of life. Some of the developing countries like China do have such awareness programs for their citizens, which have proven to be quite helpful.

We feel that this article would be incomplete if we were not to acknowledge the various good aspects about India like the English speaking literate population, hunger amongst the youngsters to excel and imbibe good foreign values, various inherent soft skills and many others, which have led to India being ranked as the 3rd most prospective top destination (after the United States of America and China) by multinational corporations<sup>14</sup>.

On the eve of the 70th anniversary since India became independent on 15th August 1947, there is a huge opportunity for India to lead and become the engine of growth in the world. Japan and the business community in Japan would be extremely happy to partner India in this progress. ■

### **ABOUT THE AUTHORS**

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#### FIRM PROFILE

**Atsumi & Sakai** is a multi-award-winning, full-service Tokyo law firm, and is the only independent Japanese law firm with overseas offices in both London and Frankfurt. The firm operates as a foreign law joint venture, which enables it to admit foreign partners and so offer its clients the quality of service that the modern international business community demands. Expanding from its highly regarded finance practice, the firm now acts for a wide range of international and domestic companies, banks, financial institutions and other businesses, offering a comprehensive range of legal expertise.

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