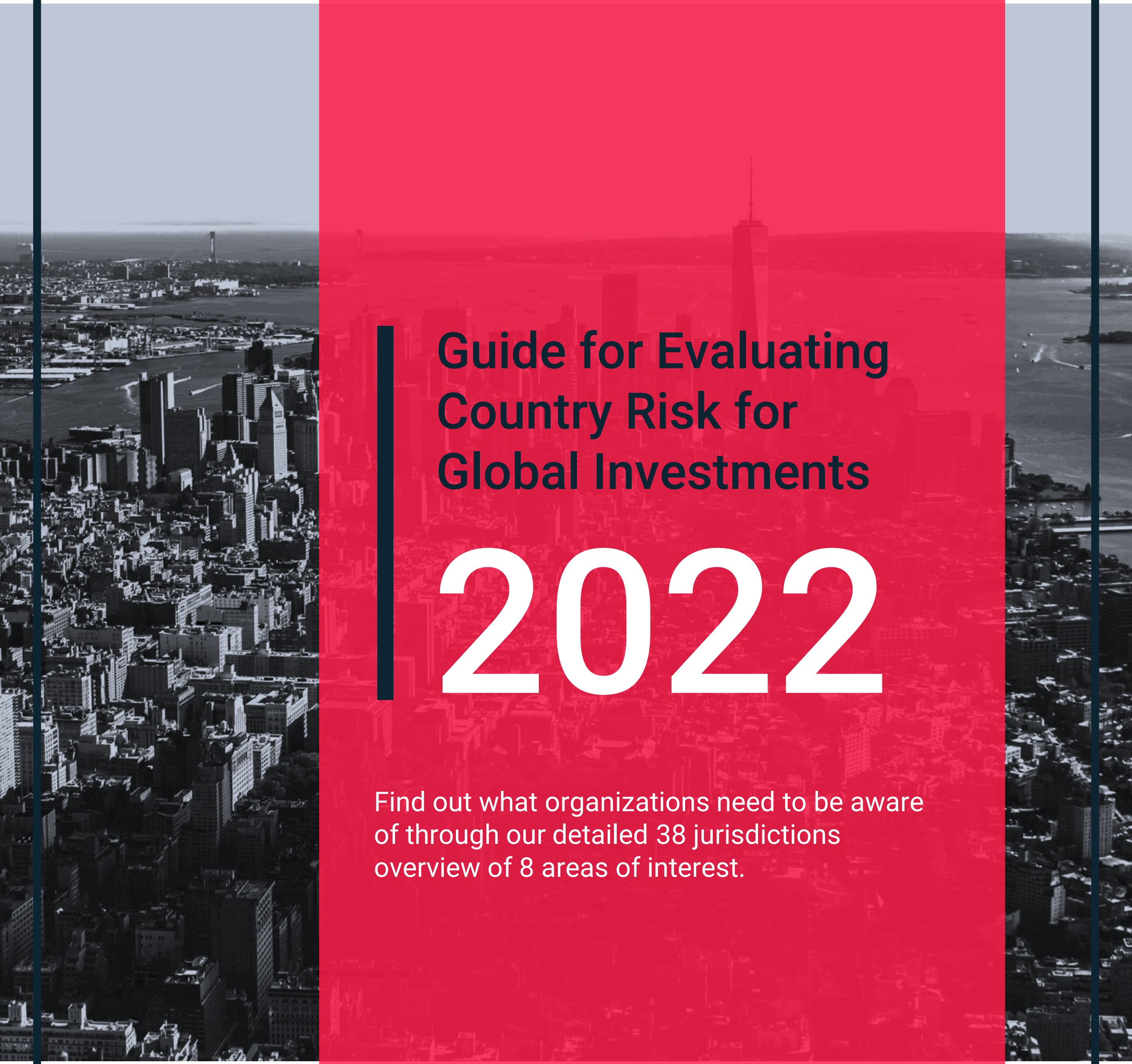

Guide for Evaluating Country Risk for Global Investments

2022

Find out what organizations need to be aware of through our detailed 38 jurisdictions overview of 8 areas of interest.

JAPAN

First Law International

FOREWORD

Orlando Casares
Chief Executive Officer

Following the 35% COVID-induced drop in global foreign investment, we are seeing a confident rebound in Foreign Direct Investment ("FDI") growth globally and a renewed interest in pursuing both greenfield and brownfield investment opportunities from corporate clients.

As the global elite network of law firms spanning across 100+ countries, it is our responsibility to guide our clients and advise them on potential investment opportunities. It is no longer sufficient for law firms to introduce their clients to a well- known financial investment firm. Indeed, more and more partners in law firms are expected to advise on the location of good investment opportunities and act as the mediator between prospective buyer and seller while looking after the interests of their clients, who are often based offshore.

At FLI we are confident that this year's edition of the Guide for Evaluating Country Risk will expand on its predecessor both in jurisdictional coverage and depth of content. This guide provides the reader with facts, figures and opinions that are not readily available in the marketplace, and which can only be provided by local law firms with the relevant internal know-how.

This guide seeks to raise questions while providing insight to assist the reader's search for the right investment opportunity, be it for their own company or for a corporate client.

JAPAN

The Market

Japan is one of the world's largest economies, attracting foreign investment by having a well-developed legal and business environment, a stable infrastructure and a high level of urban safety. The most active sectors for foreign investment are non-manufacturing, finance and insurance being the most prevalent. In June 2021, the Council for the Promotion of Foreign Direct Investment in Japan publicly announced the 'Strategy for Promotion Foreign Direct investment in Japan' and set a new target of 'aiming to increase the balance of foreign direct investment in Japan to 80 trillion JPY, equivalent to 12% of GDP by 2030'.

Legal System

The Foreign Exchange and Foreign Trade Act (FEFTA) governs foreign investment into Japan. The Ministry of Finance and the Ministry of Economy, Trade and Industry are the primary Japanese authorities charged with administering the FEFTA. The Bank of Japan also has jurisdiction over certain administrative matters and other agencies have jurisdiction over specific industries.

Japan is a member of the World Trade Organization (WTO), the Trans-Pacific Strategic Economic Partnership (TPPI) and the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (TTPII).

The Regional Comprehensive Economic Partnership signed by 10 ASEAN countries and five non-ASEAN countries including Japan, China and South Korea is one of the largest regional free trade agreement, which became effective in January 2022.

Individual Investors

Japan waives visa requirements for foreign nationals from 68 countries for short-term stays of up to 90 days, for the purposes of tourism, commerce, conferences or personal visits. Foreign nationals coming to Japan through the visa waiver programme are prohibited from working but can engage in market research and other activities in preparation for future investment.

The liability of an individual to pay personal income tax and local inhabitants' tax to the Japanese government is determined based on the residency status of the individual. A permanent resident is any foreign national resident who is domiciled or had a residence in Japan for more than five years in total over the last ten years. A non-resident foreign national is any person who stays in Japan for less than a year, including temporary visitors.

Permanent residents are taxed on their worldwide income. Non-permanent residents are taxed on all income, but foreign-sourced income that is not remitted into Japan.

Restrictions

The FEFTA, requires a prior notification to the government and is subject to review of inward investment in:

I. Industries related to national security, e.g., arms, aircraft, and nuclear power;

II. Industries related to public order, e.g., electricity and gas;

III. Industries related to public safety, e.g., pharmaceuticals; and

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JAPAN

III. Industries that contribute to the smooth operation of the economy, e.g., petroleum, agriculture, and fisheries.

Foreign investment in the banking, insurance, energy, electricity, security and pharmaceutical sectors is subject to licensing by the government authorities.

Imports

The following statues prohibit and restrict the importation of certain goods:

- Customs Act.
- Plant Protection Act
- Act on Domestic Animal Infectious Diseases Control
- Act on Ensuring Quality, Effectiveness and Safety of Medical and Pharmaceutical Products and Medical Equipment.
- FEFTA

Customs duties, national and local consumption taxes are payable on imported commercial goods. General consumption taxes applicable to goods are calculated based on their value. Certain goods such as liquor, tobacco, volatile oils, petroleum, gas, and petroleum coal attract additional duties.

Certain business regulations on providing services also apply to service providers in Japan regardless of whether their customers are based in Japan or in foreign countries. Service providers must have relevant licenses and are subject to various conduct rules for the purposes of customer protection.

Structuring & Tax

A representative office is the simplest structure for establishing a presence in Japan. It can be used to perform market research, advertisement or other preparatory activities prior to the full launch of a business in Japan. Business beyond these preparatory activities is not permitted.

The most common corporate structure in Japan is the kabushiki kaisha (KK), a limited liability stock company, with internal organisation and operation set out under the Companies Act. When a foreign investor establishes a KK as its Japanese subsidiary, corporation tax is payable on the income of the KK in Japan. Dividends to shareholders are also taxable.

A godo kaisha (GK) is also established under the Companies Act, and like a KK is a limited liability company in which the members are liable only to the extent of their investment into the GK's capital. A GK has more flexible internal control under its articles of incorporation. A GK is often used with a profit-sharing agreement investment scheme (tokumei kumiai) (TK). By entering into a TK agreement, the profits to be distributed to applicable members can be deducted from the taxable income of the GK, acting as a pass-through to its members.

Income generated from a corporation's business activities are liable to:

- Corporate tax.
- Corporate inhabitant tax.
- Business tax.
- Special local corporation tax.

Reforms

The Tokyo Stock Exchange (TSE) is reforming the structure by reclassifying the market into three sections: ‘Prime Market’, ‘Standard Market’ and ‘Growth Market’. This reform will be effective from April 2022.

Incentives

There are a number of tax incentives on both the national and local levels that are available to foreign investors into Japan. These incentives include the following:

- Tax incentives for comprehensive special zones. The Japanese government has designated special zones throughout Japan, investment in these zones offers tax benefits in the form of special depreciation rules and other deductions relating to investments in equipment and facilities.

- Tax incentives for strengthening local business. Tax incentives are available to both national and local taxes for establishing, expanding or relocating corporate headquarters outside of the Tokyo Metropolitan area.

In addition to tax incentives, the government has adopted a proposal to reduce the cost to businesses of complying with administrative procedures by 20%.

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