

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

# Peer Review Report Combined: Phase 1 + Phase 2

**JAPAN**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Japan 2011**

COMBINED: PHASE 1 + PHASE 2

October 2011  
(reflecting the legal and regulatory framework  
as at July 2011)



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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).





## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Japan as well as the practical implementation of that framework. The international standard, which is set out in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and whether that information can be effectively exchanged with the jurisdiction's exchange of information partners.

2. Japan fully endorses the implementation of the international standards for transparency and exchange of information for tax purposes. Japan has been an active member of the Global Forum on Transparency and Exchange of Information for Tax Purposes since its creation. As one of the world's largest economies, Japan has a long history in negotiating tax treaties leading to an extensive network of bilateral agreements that provide for exchange of information in tax matters. Japan has 65 exchange of information partners covered by 54 agreements (50 double taxation conventions (DTCs) and 4 tax information exchange agreements (TIEAs)), 47 of which are in force. The large majority of Japan's agreements are consistent with the international standard. Japan actively seeks to expand its exchange of information network and is currently engaged in additional negotiations to conclude agreements to the standard. Japan's agreements cover its major trading partners and Japan has not refused to enter into an exchange of information agreement with any Global Forum member seeking to do so.

3. Japan's legal and regulatory framework for transparency and exchange of information is in place. Japan relies primarily on a centralised system of registration, business record keeping requirements and statutory tax filing requirements to ensure the maintenance of information on the ownership of relevant entities and arrangements. Bearer shares cannot be issued in Japan. Legal entities and arrangements are obliged to maintain a full range of accounting records, including underlying documentation, for a minimum of five years. Financial institutions are obliged to maintain information

on all account holders and related financial and transactional information. Additionally, there are a variety of penalties under Japan's laws to ensure that information required to be maintained is, in fact, maintained. Japan's competent authority receives a number of requests each year relating to the ownership of relevant legal entities and arrangements, accounting records, and bank information. Input received from Japan's peers notes that Japan has been able to respond to all such requests.

4. Japan's tax authorities have the necessary powers to obtain bank, ownership, identity, and accounting information and have enforcement measures to compel the production of such information. The ability of Japan's tax authorities to obtain information for exchange of information purposes is derived from its general access powers under the *Tax Treaties Special Provisions Act*, coupled with the authority provided by the relevant exchange of information agreements. No bank secrecy or corporate secrecy provisions exist in Japan that limit the ability of Japan's competent authority to respond to an international request for information. Similarly, the rights and safeguards that apply to persons in Japan do not restrict the scope of information that Japan's tax authorities can obtain.

5. Japan's competent authority (in practice, the National Tax Agency's Director of the International Operations Division), when requested by a foreign counterpart, can retrieve information with the assistance of officials within Regional Taxation Bureaus and Tax Offices, which have the necessary powers under the *Tax Treaties Special Provisions Act* to access information from taxpayers and third parties. Japan's National Tax Agency also has officials in offices around the world who facilitate exchange of information with its key trading partners. Further, with the aim of identifying and curbing international tax avoidance, Japan participates in the Joint International Tax Shelter Information Centre (JITSIC) along with Australia, Canada, the People's Republic of China, the Republic of Korea, the United Kingdom, and the United States.

6. Input received from Japan's peers indicates, however, that in many cases Japan does not respond to requests for information within 90 days. Japan's domestic procedures for handling exchange of information requests, in particular the lack of internal timelines for responding to requests, appear to inhibit expedient response times. In addition, Japan's competent authority does not systematically provide requesting jurisdictions with a status update when requests cannot be responded to within 90 days. It is therefore recommended that Japan ensure that its authorities set appropriate internal deadlines to be able to respond to exchange of information requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

7. In general, the responses the assessment team received to the peer questionnaire from Japan's exchange of information partners suggest that Japan's practices in terms of exchange of information are to a high standard. Japan has been able to respond to the vast majority of requests it receives in a thorough and comprehensive manner.



## Introduction

### Information and methodology used for the peer review of Japan

8. The assessment of the legal and regulatory framework of Japan and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at July 2011, other information, explanations and materials supplied by Japan during the on-site visit that took place on 23-27 May 2011, and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of relevant Japan government agencies, including the Ministry of Finance, National Tax Agency, Regional Taxation Bureau, Tax Office, Ministry of Justice, Legal Affairs Bureau, and National Police Agency (see Annex 4).

9. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This combined review assesses Japan’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made regarding Japan’s legal and regulatory framework that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are also made concerning Japan’s practical application of each of the essential elements. As outlined in the *Note on Assessment Criteria*, following a jurisdiction’s Phase 2 review, a “Rating” will be applied

to each of the essential elements to reflect the overall position of a jurisdiction. However, this rating will only be published “at such time as a representative subset of Phase 2 reviews is completed”. This report therefore includes recommendations in respect of Japan’s legal and regulatory framework and the actual implementation of the essential elements, as well as a determination on the legal and regulatory framework, but it does not include a rating of the elements.

10. The assessment was conducted by a team which consisted of three assessors and a representative of the Global Forum Secretariat: Ms. Helen Ritchie of HM Revenue and Customs of the United Kingdom; Ms. Elizabeth Gillam of HM Treasury of the United Kingdom; Ms. Elizabeth Leite of the Secretariat of Federal Revenue of Brazil; and Mr. Stewart Brant from the Global Forum Secretariat.

## Overview of Japan

11. Japan is a chain of islands located in Eastern Asia at the east of the Korean Peninsula. It is mainly constituted of four islands Hokkaido, Honshu, Shikoku, Kyushu and the archipelago of Ryukyu covering an area of more than 377 000 square kilometres, divided into 47 prefectures. Tokyo is the capital city and the political, economic and administrative centre. There are 47 prefectures and approximately 1 720 municipalities (cities, town, villages) in Japan.

12. As at September 2010, the population of Japan was approximately 128 million.<sup>1</sup> Japanese represent 98.4% of the population. The official language of Japan is Japanese. The writing system is made up of kanji, or Chinese characters (there are approximately 3 000 in daily use), and two syllabaries, hiragana and katakana, each composed of 46 kana, which are phonetic symbols.

13. Japan is an industrialised country. After three decades of strong growth, the Japanese economy saw a major slowdown starting in the 1990s. Japan remains a major economic power and is one of the world’s strongest economies. Japan’s gross domestic product (GDP, current prices) was approximately 475 trillion Japanese yen (JPY)<sup>2</sup> (EUR 4.1 trillion) and the real GDP growth rate was 2.4% in 2009. The Japanese economy is dominated by services (74.9%) and industry (23.8%); agriculture represents 1.4%. Japan’s major trading partners are (in order) the People’s Republic of China; the

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1. 2010 figures, Statistics Japan, [www.stat.go.jp/english/](http://www.stat.go.jp/english/).

2. IFS – International Financial Statistics, International Monetary Fund, accessed 18 May 2011: [www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2010&ey=2012&scsm=1&ssd=1&sort=country&ds=.&br=1&c=158&s=N&GDP&grp=0&a=&pr1.x=46&pr1.y=5](http://www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2010&ey=2012&scsm=1&ssd=1&sort=country&ds=.&br=1&c=158&s=N&GDP&grp=0&a=&pr1.x=46&pr1.y=5).

United States; Hong Kong, China; the Republic of Korea; Singapore; Saudi Arabia; Indonesia; Germany and Australia. Japan's currency is the Japanese Yen (JPY) (JPY 115 = EUR 1 as at 28 March 2011).<sup>3</sup>

14. Japan is a member of the Asia Pacific Economic Co-operation (APEC), Group of Eight (G8), Group of Twenty (G20), Organisation for Economic Co-operation and Development (OECD), World Trade Organisation (WTO) and the United Nations (UN). Japan is a founding member of the Financial Action Task Force (FATF) and a member of the Global Forum since its beginning.

### ***General information on legal system and the taxation system***

15. Japan is a constitutional monarchy with a parliamentary government. The symbol of state is the Emperor and the head of the government is the Prime Minister, elected by the legislature (the Diet). Japan's representative democracy is made up of executive, legislative and judicial branches. The executive branch is the Cabinet (Naikaku) which is comprised of the Prime Minister and 14-17 Ministers of State, appointed by the Prime Minister. The legislative branch, the Diet (Kokkai), consists of the House of Representatives (Lower House, 480 seats) and the House of Councillors (Upper House, 242 seats). There is universal adult suffrage from 20 years of age. The judicial branch is made up of 438 summary courts, at least one district court and family court in each prefecture, 8 high courts and the Supreme Court. All of these courts (excluding family courts) can hear tax cases. Judgements of the Supreme Court are legally binding on the lower courts.

16. The *Constitution* of Japan dated 3 November 1946 states a principle of separation of powers: powers of legislation, administration and judiciary respectively exercised by the Diet, the Cabinet and the Supreme Court (Arts.41, 65, 76). The legal system is based on the civil law system and was influenced by the German and French civil law systems. However, after World War II, the United States heavily influenced the Japanese system resulting in introduction of, for example, the principle of judicial review.

17. The National Diet is the sole lawmaking body in Japan. Draft bills may, however, come from government agencies and are submitted to the Diet through the Cabinet for discussion and vote. The following is the hierarchy of laws in Japan: Constitution; treaties; Acts and laws; cabinet orders; ministry ordinances; and ministry notifications.

18. Laws, cabinet orders, ministry ordinances, and ministry notifications have the status of law and are considered judicial criteria. Laws and Acts are approved by the Diet. In order to implement the provisions of a law, the Cabinet

3. [www.xe.com/](http://www.xe.com/).

can enact Cabinet Orders (*Constitution Art.73(6)*). In addition, each Minister can enact Ministerial Ordinances and Ministerial Notifications in order to implement laws and Cabinet Orders. Rules and administrative guidance or guidelines (*Tsuutatsu*) do not have the status of law. The Commissioner of Japan's National Tax Agency issues rules and guidelines to officials of the National Tax Agency and its local subordinate bureaus, providing a uniform interpretation and application of laws and ordinances. These rules and guidelines, unlike laws and regulations, do not bind judicial decisions, but provide guidelines for officials of the National Tax Agency in relation to the implementation of tax laws. Final interpretation of laws and ordinances lies with the courts.

19. Treaties with foreign jurisdictions are concluded by the Cabinet but require the approval of the Diet (*Constitution Article 73(3)*). Treaties are given the full force and effect of law in Japan and must be faithfully observed. International agreements, such as double taxation conventions (DTCs) and taxation information exchange agreements (TIEAs) override domestic laws in the case of conflict.

### ***The tax system***

20. The administration of Japan's tax system is under the general jurisdiction of the Ministry of Finance, consisting of the Minister's Secretariat, Budget Bureau, Tax Bureau, Customs and Tariff Bureau, Financial Bureau, and International Bureau. In addition to these internal bureaus, the Ministry has, as its operational agency, the National Tax Agency.

21. The Tax Bureau is responsible for *inter alia* research and planning concerning the tax system, international tax treaty matters, licensed tax accountant system and the drafting of tax laws. The Tax Bureau consists of the Co-ordination Division, Research Division, Income Tax and Property Tax Policy Division, Indirect Tax Policy Division, Corporation Tax Policy Division and International Tax Policy Division. In particular, the International Tax Policy Division is in charge of researching, planning, and drafting international tax treaties and laws and regulations of taxation on incomes of non-residents and foreign corporations and systems of foreign tax credit.

22. The National Tax Agency, established on 1 June 1949, is responsible for the enforcement of tax laws and deals with tax administration in general. The National Tax Agency is headed by the Commissioner and consists of the Commissioner's Secretariat and three Departments with 715 officials, several affiliated organs with 811 officials, 11 Regional Taxation Bureaus, the Okinawa Regional Taxation Office, and 524 Tax Offices with 54 735 officials (as of the end of March 2011). In general, the functions of the National Tax Agency are to propose plans to execute tax administration, issue directives to Regional Taxation Bureaus, and supervise and direct Regional Taxation Bureaus and Tax Offices.



23. Regional Taxation Bureaus<sup>4</sup> are responsible for the assessment and collection of national taxes within their jurisdiction. Each Bureau directs and supervises, under the superintendence of the National Tax Agency, Tax Offices situated in its jurisdiction. In addition, the Bureau directly handles the assessment and collection of taxes for certain taxpayers. Tax Offices are responsible for the assessment and collection of national taxes under the direction and supervision of the Regional Taxation Bureaus. Tax Offices are located in principal cities all over Japan. Every tax office deals with all types of national taxes.

24. The current tax system in Japan is divided into two parts: taxes imposed by the national government (national taxes) and taxes imposed by local governments, which are prefectures and municipalities (local taxes). The major national taxes are:

- income tax: a direct tax levied on the net income of the individual;
- corporation tax: a direct tax levied on the net income of a corporation;
- consumption tax: an indirect tax levied on transactions of goods and services in general;
- inheritance tax and gift tax: taxes imposed on the recipient of inherited properties, gifts, or bequests;
- gasoline tax: an indirect tax levied on gasoline shipped from refineries or withdrawn from bonded areas; and
- liquor tax: an indirect tax levied on domestic liquor shipped from manufacturing premises and on imported liquor withdrawn from bonded areas.

25. Article 30 of the Japanese *Constitution* states that “[t]he people shall be liable to taxation as provided by law”, declaring the duty of the people to pay tax. In addition, Article 84 states “[n]o new taxes shall be levied or existing taxes modified except by law or under such conditions as law may prescribe”, laying down the principle that no taxes can be imposed on the people except by law.

26. Article 94 of the Japanese *Constitution* states that “[l]ocal public entities shall have the right to manage their property, affairs, and administration

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4. In general, the Regional Taxation Bureau is composed of five departments: a Management and Co-ordination Department; the First Taxation Department; the Second Taxation Department, the Revenue Management and Collection Department; and the Large Enterprise Examination and Criminal Investigation Bureaus. Their activities are in general similar to those of the National Tax Agency.

and to enact their own regulations within the law” and Article 233 of the *Local Autonomy Act* provides that “[l]ocal public entities can assess and collect local taxes as provided by law.” Under these provisions, local public entities are given the right to assess and collect local taxes; thus the *Local Tax Act (1950)* was enacted. Unlike national tax laws (e.g. *Corporation Tax Act*, *Income Tax Act*), the *Local Tax Act* does not directly mandate that residents pay taxes. It only confirms the right of local public entities to assess and collect taxes within a framework prescribed by law. The regulations enacted by each local public entity mandate that residents pay local taxes.

27. Some local taxes have the same tax base as that of national taxes and are paid by the same taxpayers as for national taxes. In order to simplify the filing procedures for taxpayers, co-ordination is maintained between the national tax authorities and local tax authorities in the aspects of the tax system and execution of tax administration. For example, taxpayers who file an income tax return are not required to file the same for enterprise tax or inhabitant’s tax, both of which are local taxes.

28. The *Income Tax Act* defines three types of individual tax residency: resident, non-resident, and non-permanent resident. Residents are taxed on worldwide income and non-residents are taxed only on their Japanese source income. Non-permanent residents are taxed on their Japanese source income and their non-Japanese source income to the extent that it is paid in or remitted to Japan. Resident is defined in Article 2 of the *Income Tax Act* as a person who has an address in Japan or who has until the time of determination of residency status spent continuously one year or more in Japan. The term “address” is interpreted according to Article 22 of the *Japan’s Civil Code* as a “base to carry on one’s life”. Non-permanent resident is a subcategory of Japanese resident; an individual who does not have Japanese nationality and, within the past ten years, spent a total of five years or less resident in Japan. A non-resident is an individual who is neither resident nor a non-permanent resident.

29. As regards corporate taxation in Japan, profits are taxed at the corporate level and may be taxed again in the hands of shareholders when they are distributed. However, a certain amount of tax credit is provided at the individual taxpayer level. Domestic companies are subject to corporation tax on their worldwide income (*Corporation Tax Act* Art.4(1)). A domestic corporation is defined as a corporation having its “head office or principal place of business” in Japan. Such entities include stock companies (*kabushiki kaisha*), limited liability companies (*godo kaisha*), general partnership companies (*gomei kaisha*) and limited partnership companies (*goshi kaisha*). The effective tax rate (national and local) on a domestic corporation is approximately 40%.

30. Companies are subject to corporation tax (national income tax), business tax (local tax) and prefectural and municipal inhabitant taxes (local tax). A size-based business tax is also payable by a company with capital exceeding JPY 100 million (EUR 870 000). Capital gains are treated as ordinary income and subject to income tax, and as such there is no separate capital gains tax.

31. Foreign companies operating through branches or any other permanent establishments are subject to corporation tax on Japanese-source income, with such tax generally being imposed through withholding taxation imposed at source on a gross basis at the time of payment (interest and dividends). A foreign corporation is defined as any corporation which is not a domestic corporation, meaning a foreign company that does not have its head office or principal place of business in Japan.

32. Corporation tax is paid under a self-assessment system. A corporation must file a corporation tax return, together with a balance sheet, a statement of profit and loss and other materials, to the tax authorities, in principle, within two months of the end of each business year, and must pay tax as reported on the return. If taxpayers fail to file correct returns, Japan's tax authorities reassess returns through a procedure of reassessment or determination. In addition, local inhabitants' tax and enterprise tax are levied by local authorities on corporations, based on their corporate income, etc.

33. Consumption tax is a sales-based tax that is similar in nature to a value-added tax. It is levied on the supply of goods and services in Japan. The tax rate is 5%, comprising 4% national consumption tax and 1% local consumption tax.

34. The *Act on General Rules for National Taxes* contains provisions for matters that are common and fundamental to all aspects of taxation in Japan. Articles dealing with procedural matters, such as the determination of the tax amount, payment of taxes (Chapters II, III), postponement of tax payment, pledges for taxes, refunds (Chapters I, IV, V), and tax disputes (Chapter VIII) make up the majority of this Act, but general provisions on additional taxes, on limitation of the period of assessment and collecting, and on other areas are also included.

35. Japan's national revenue (revised budget for general account revenues) in fiscal year 2010 was JPY 96 728 billion (EUR 841.1 billion), of which JPY 39 643 billion (EUR 344.7 billion) was from taxes and stamp revenues. Income tax, corporation tax and consumption tax account for approximately 80% of tax revenues.

### *International exchange of information for tax purposes*

36. Japan’s framework relevant to exchange of information for tax purposes is presided over by Japan’s Ministry of Finance. Administration of the exchange of information under Japan’s treaty network is the responsibility of Japan’s competent authority, being the Minister of Finance or an authorised representative of the Minister. The Director of the International Operations Division of the National Tax Agency is authorised to act as competent authority and, in practice, is responsible for managing and responding to all of Japan’s exchange of information requests.

37. Japan has an extensive network of bilateral agreements that provide for exchange of information in tax matters, and is currently engaged in additional negotiations as well as renegotiations of its older treaties. Japan has 65 exchange of information partners covered by 54 agreements (50 double tax conventions (DTCs) and 4 tax information exchange agreements (TIEAs)), 47 of which are in force.

38. Japan is exchanging information both through specific requests and on automatic or spontaneous basis on more than 200 000 cases a year. Japan’s National Tax Agency dispatches its officials around the world as “long-term visitors” for facilitating exchange of information with its key foreign partners. Further, with the aim of identifying and curbing international tax avoidance, Japan participates in the Joint International Tax Shelter Information Centre (JITSIC).

### *Overview of the financial sector and relevant professions*

39. Japan is one of the major financial centres in the world. The financial sector consists mainly of commercial banks, with JPY 847 trillion (EUR 7.36 trillion) assets in total.

<b>Type of institution</b>	<b>Number of institutions (January 2011)</b>	<b>Total assets (non-consolidated) (trillion JPY)</b>
Banks (total)	1 602	
Commercial banks*	202	847 (as of December 2010)
Shinkin banks (co-operative regional financial institutions)	273	155 (as of March 2010)
Labour banks	14	22 (as of March 2010)
Credit co-operatives	159	22 (as of March 2010)
Agricultural co-operatives	762 (as of September 2010)	156 (as of March 2009)
Fishery co-operatives	190 (as of September 2010)	4 (as of March 2009)

Type of institution	Number of institutions (January 2011)	Total assets (non-consolidated) (trillion JPY)
Norinchukin bank (co-operative bank)	1	68 (as of March 2010)
Shokochukin bank (national bank)	1	12 (as of March 2010)
<b>Insurance companies**</b>	<b>97</b> (47 life insurance companies, 50 non-life insurance companies)	349 (as of September 2010)
<b>Securities Companies</b> (Type I Financial Instruments Business Operators )***	337	107.4 (as of December 2010)
<b>Trust companies****</b>	<b>58</b> (44 of them are trust banks)	306 (as of March 2010) (Trust banks account for 99.99% of this amount)

\* Includes Japan Post Bank.

\*\* Includes Japan Post Insurance.

\*\*\* Defined by the Financial Instruments and Exchange Act.

\*\*\*\* Trust banks are included in both commercial banks and trust companies.

40. It is noted that Japan Post, which was the largest deposit taking institution in the world, was split into five companies and privatised as the Japan Post Group in October 2007. Banking business is run by Japan Post Bank with total assets of JPY 193 trillion (EUR 1.68 trillion) and insurance business run by Japan Post Insurance with total assets of JPY 96 trillion (EUR 0.84 trillion) as of March 2011.

41. Japan has seven Financial Instruments Exchanges, which include Tokyo Stock Exchange (TSE), Osaka Securities Exchange (OSE), Nagoya Stock Exchange (NSE), Fukuoka Stock Exchange (FSE), Sapporo Securities Exchange (SSE), Tokyo Financial Exchange (TFX), and TOKYO AIM (AIM).

42. The Financial Services Agency is in charge of ensuring the stability of Japan's financial system and protecting depositors, insurance policyholders, securities investors and any other equivalent to these persons. Its main responsibilities are:

- designing and planning the financial system;
- inspecting and supervising private financial institutions such as banks, securities companies trust companies, and insurance companies as well as market-related entities such as securities exchanges, and certified public accountants, auditing firms;

- establishing transaction rules in the securities markets;
- setting corporate accounting standards and other matters concerning corporate finance; and
- monitoring the compliance with securities market rules.

43. Japan has one free-trade zone, the Okinawa Special Free Trade Zone, established in 1999 in the Okinawa Prefecture, to promote industry and trade in this region. The zone is regulated by the Department of Okinawa Affairs in the Cabinet Office. Japan also has two free ports, Nagasaki and Niigata. Customs authorities allow the bonding of warehousing and processing facilities adjacent to these ports on a case-by-case basis. Companies operating in Japan's free-trade zone and free ports are subject to the *Companies Act* and *Corporation Tax Act*.

44. Attorneys, judicial scriveners and administrative scriveners (*gyoseishoshi* lawyers) are among the specialists who can be consulted on the establishment of companies and branch offices in Japan. These specialists can be asked to prepare various documents on a client's behalf (e.g. documentation related to the establishment of Japanese branch offices and Japanese corporations, transfers of location, changes of executives, changes of business purposes, increases in capital, organisational changes, mergers and dissolution). Commercial registration applications for submission to the Legal Affairs Bureau are the exclusive province of judicial scriveners and attorneys.

45. Certified public accountants and tax accountants are specialists providing accounting and tax support to companies operating in Japan. Both have qualifications recognised by law, and only persons with these qualifications may engage in legally stipulated monopoly businesses. Certified public accountants<sup>5</sup> have a monopoly on the performance of audits under the *Certified Public Accountants Act*, while tax accountants (including certified public accountants registered as certified public tax accountants) have a monopoly on tax agent services, preparation of tax documentation and tax consultations under the *Certified Public Tax Accountants Act*.

46. Certified public tax accountants (CPTAs) (*zeirishi*) are professional specialists on taxes, whose roles are to help taxpayers properly file tax returns and pay taxes. The *Certified Public Tax Accountants Act* provides their public mission: “[b]ased on their independent and fair standpoint, they shall respond to person with a tax obligation trust in line with the principles

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5. The mission of certified public accountants is to ensure the fair business activities of companies and the protection of investors and creditors by securing the credibility of financial statements and other related financial information from their independent standpoint as auditing and accounting professionals (*Certified Public Accountants Act* Art.1).

of the self-assessment system and achieve proper tax compliance as provided for in the Tax Law” (Article 1). As of March 2010, 71 606 persons are registered as CPTAs, and 1 949 professional tax firms are established. Japan’s National Tax Agency is the supervisory authority for CPTAs.

## **Recent developments**

47. Japan signed one TIEA (Bermuda) and nine DTCs (Belgium (protocol); Hong Kong; Kuwait; Luxembourg (protocol); Malaysia (protocol); Netherlands (protocol); Saudi Arabia; Singapore (protocol); Switzerland (protocol)) in 2010. Japan signed TIEAs with three jurisdictions in the first half of 2011 (The Bahamas; the Cayman Islands; the Isle of Man).





## Compliance with the Standards

### A. Availability of information

#### Overview

48. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority<sup>6</sup> may not be able to obtain and provide it when requested. This section of the report describes and assesses Japan's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of this framework.

49. The legal and regulatory framework for the maintenance of ownership and identity information is in place in Japan. Information received from partner jurisdictions with an exchange of information relationship with Japan, as well as quantitative and qualitative information received from Japan, indicates that Japan actively exchanges bank, ownership and identity information and accounting records. Based on peer input received, it is clear that Japan's competent authority has been able to provide such information for all types of legal entities and arrangements in response to specific requests for exchange of information.

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6. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

50. The main business structures used in Japan are companies (stock companies and membership companies), limited partnerships (LLPs and investment LPSs), and business trusts. Japan relies primarily on a centralised system of company registration, corporate record keeping requirements and statutory tax filing requirements to ensure the maintenance of information on the legal ownership of companies. All companies in Japan are subject to the *Companies Act* and *Corporation Tax Act*. Bearer shares cannot be issued in Japan.

51. Foreign companies conducting continuous transactions (*i.e.* more than marketing or information gathering activities) in Japan are obliged to register with the Legal Affairs Bureau (the registrar) and are subject to the same tax filing requirements as domestic companies under the *Corporation Tax Act* as regards Japanese-source income. At least one representative of the foreign company must reside in Japan. Foreign companies are obliged to file with the tax authorities the names and addresses of the foreign company's three largest shareholder groups (consisting of one shareholder and its family). Additionally, foreign companies need to maintain shareholder information in order to comply with Japan's controlled foreign company rules, corporate inversion rules, and transfer pricing rules.

52. Limited liability partnerships (LLPs) and investment limited partnerships (Investment LPSs) are obliged to register the names and addresses of all partners of LLPs and the general partners of Investment LPSs with the Legal Affairs Bureau. LLPs and Investment LPSs are further obliged to maintain written partnership contracts that contain the names and addresses of all partners (including the limited partners of a Investment LPS). Partners in general partnerships established under Japan's *Civil Code* (NKs), LLPs and LPSs are obliged to maintain contractual agreements pursuant to the record-keeping requirements under the *Income Tax Act* and *Corporation Tax Act*. The partners are also subject to tax reporting requirements when they distribute partnership profit and loss and are obliged to file the names and addresses of partners receiving distributions with the tax authorities. As NK contracts are not statutorily required to be in writing, it is recommended that Japan monitor the availability of ownership and identity information for NKs, in particular any exchange of information requests that cannot be satisfied because the information is not maintained.

53. Japanese law requires the maintenance of information that identifies the settlors, trustees, and beneficiaries of trusts. Japanese trusts are generally considered as vehicles for commercial dealings and administered by trust companies. Trustees of Japanese and foreign trusts, excluding trustees of collective investment trusts, defined retirement and pension trusts, and trusts taxable as corporations, are obliged to provide the names and addresses of the trustees, settlors and beneficiaries of the trust to the tax authorities on

an annual basis. Trustees are subject to record-keeping requirements under Japan's AML legislation, which requires the maintenance of ownership information on the settlors and beneficiaries.

54. Japanese law requires the maintenance of information that identifies the founders and members of the foundation council and beneficiaries of foundations established under its laws. The *General Incorporated Associations and General Incorporated Foundations Act (GIAGIF Act)* requires foundations to register the names of the foundation councillors, directors, and auditors with the Legal Affairs Bureau. The *GIAGIF Act* requires the maintenance of accounting books and financial statements. The accounting books identify beneficiaries (if any) who have received payments from the foundation or association.

55. Relevant legal entities and arrangements carrying on business in Japan are obliged to maintain a full range of accounting records, including underlying documentation, for a minimum of five years. Financial institutions operating in Japan are obliged to maintain information on all account-holders and related financial and transactional information.

56. In order for Japan's self-assessment tax system to work, a high degree of taxpayer compliance is necessary. It was explained to the assessment team that Japan has a strong compliance culture, in particular as regards compliance with Japan's statutory tax filing and reporting obligations. The National Tax Agency reports to have few difficulties with respect to issues regarding the availability of ownership and identity information, both for domestic tax cases and for international assistance in tax matters. Additionally, there are a variety of penalties under Japan's laws to ensure that information required to be maintained is, in fact, maintained. The penalties appear to be proportionate and dissuasive enough to ensure compliance. Most of Japan's laws provide a range of penalties, including small to large monetary fines depending on the level of infraction, and imprisonment in egregious cases.

## A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

57. Japan's Legal Affairs Bureau, under the Ministry of Justice, is responsible for handling matters concerning the registration of companies, real estate, family registration, nationality, deposit, notarisation, judicial scriveners, and the drafting of bills concerning basic civil laws, such as the *Civil Code*, the *Code of Civil Procedure*, the *Companies Act*, the *Commercial Registration Act*, as well as amendments and abolition thereof. As of 1 April

2011, there were 441 Legal Affairs Bureau registry offices (including branch offices) located in major cities throughout Japan. Online application for commercial registration is available. In order to use this system, the user must obtain a digital certification of the user's digital signature.

58. Information maintained by the Legal Affairs Bureau is electronically stored and centrally managed in various registries which it is responsible for maintaining. All Japanese companies and foreign corporations conducting continuous transactions (*i.e.* more than marketing or other representative office type activities) in Japan are obliged to register with the Legal Affairs Bureau. The registers contain information identifying the legal person's directors, senior managers and legal owners (in most instances). Information maintained by the Legal Affairs Bureau is often the subject of international exchange of information requests. Japan's National Tax Agency can effectively access information maintained by the Legal Affairs Bureau.

59. Additionally, Japan's National Tax Agency maintains its own electronic information system, called the KSK system ("Kokuzei Sogo Kanri" or Comprehensive Tax Administrative System), which links all Regional Taxation Bureaus and Tax Offices, was introduced to handle a variety of different administrative tasks. The National Tax Agency currently collects over 300 million information returns each year, and information and data on tax returns are managed in the KSK system. The entry of tax returns, disclosure statements, tax payment records, and a variety of information enables the centralisation of the administration of taxes in Japan. Analysed data is used in tax examination and collection of delinquent tax.

60. The KSK system accumulates data input about tax returns and tax payment records and also systematically combines the data, which enables central management of national tax claims and liabilities. Information regarding tax returns and records of taxation may be extracted from this system by way of directed queries, including by personnel in Japan's competent authority for international exchange of information, the National Tax Agency's Director of the International Operations Division. Japan's competent authority reports that during the past three years ending on 31 December 2009, approximately 20% of requests from foreign jurisdictions have been responded to by providing information maintained in the KSK system.

61. Japan's tax officials are able to access information maintained by the Legal Affairs Bureau as well as within the KSK system for ownership and identity information on various types of legal entities and arrangements. Japan's officials report to have few difficulties with respect to issues regarding the availability of ownership and identity information, both for domestic tax cases and for providing exchange of information assistance.

## *Companies (ToR<sup>7</sup> A.1.1)*

### *Types of companies*

62. The *Companies Act* (2005) provides general rules for the formation, organisation, operation and management of companies in Japan. Article 2 of the *Companies Act* defines “company” as any stock company (kabushiki kaisha), general partnership company (gomei kaisha), limited partnership company (goshi kaisha) or limited liability company (godo kaisha). Stock companies can be public or private companies. Membership of a general partnership company comprises one or more unlimited liability members. Membership of a limited partnership company comprises one or more limited liability members as well as one or more unlimited liability members. Membership of a limited liability company comprises one or more limited liability members. General partnership companies, limited partnership companies and limited liability companies are referred to as “membership companies” (Art.575(1)).

63. A number of categories of companies of a specialised nature also exist in Japan. These are subject to the *Corporation Tax Act*, but also receive special legislative treatment in other enactments, as follows: mutual companies (insurance businesses) are subject to the *Insurance Business Act*; specific purpose companies (tokutei mokuteki kaisha)<sup>8</sup> are subject to the *Act on Securitization of Assets*; and investment corporations<sup>9</sup> are subject to the *Act on Investment Trusts and Investment Corporations*. These companies are more closely regulated by the government than companies formed under the *Companies Act*.

64. Article 2 of the *Companies Act* defines “foreign company” as any legal person incorporated under the law of a foreign jurisdiction or such other foreign organisation that is of the same kind as, or similar to, a domestic company.

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7. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*
  8. Tokutei mokuteki kaisha (TMK) is treated as a domestic corporation for Japanese tax purposes. A TMK is a special corporation that is used solely for liquidation of assets and functions simply as conduit. Tax laws allows the deduction as expense of dividends paid by the TMK provided certain criteria are met, including distribution of more than 90% of the TMK’s profits each fiscal year. This allows a de facto pass through treatment to apply to the TMK for tax purposes.
  9. Investment corporations are used as a collective investment vehicle to invest funds in securities and real estate. Investment corporations can be subject to pay-through taxation like a TMK provided certain criteria are met, including distribution of more than 90% of its profits each fiscal year. An investment corporation is treated as a domestic corporation for Japanese tax purposes.

## *Ownership information on domestic companies*

### Registration of companies

65. The Legal Affairs Bureau of Japan's Ministry of Justice is responsible for handling matters concerning the registration of companies.<sup>10</sup> All Japanese companies incorporated under the *Companies Act* are obliged to register their incorporation documents at the location of its head office with the competent branch of the Legal Affairs Bureau (*Companies Act* Arts.49, 579). Mutual companies, specific purpose companies, and investment corporations are also obliged to register their incorporation documents with the competent branch of the Legal Affairs Bureau (*Insurance Business Law* Art.30-13; *Act on Securitization of Assets* Art.23; *Act on Investment Trusts and Investment Corporations* Art.74).

66. Company registration requirements apply to all Japanese companies, regardless of whether they are owned by non-residents, or whether the company carries on business activities within Japan or offshore.

67. Registration of incorporation for stock companies is completed by registering *inter alia* the following: the company's purpose; trade name; location of head office; total number of authorised shares and details of the shares it issues; and names and addresses of the directors (*Companies Act* Arts.27, 911(3)). Articles of incorporation are not effective unless they are certified by a notary public (Art.30).

68. Registration of incorporation for membership companies (general partnership companies, limited partnership companies and limited liability companies) is completed by registering the following: the company's purpose; trade name; address of the head office and branch offices; and names and domiciles of the partners (and if the partner representing a membership company is a legal person, the name and domicile of the person who is to perform the duties of such partner) (*Companies Act* Arts.912, 913, 914).

69. After registration documents are accepted by the Legal Affairs Bureau, companies must apply for an issuance of the company registration and the certificate of seal registration at the same location of the Legal Affairs Bureau. Generally, a judicial scrivener<sup>11</sup> completes the registration procedure. The

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10. Japan's Legal Affairs Bureau also maintains a register of immovable property (real estate) which contains information on the condition of property, including ownership and the rights involved.

11. Judicial scriveners provide various services, including representation in procedures related to registration or deposit administration; preparation of documents or electromagnetic records to be submitted to a court, public prosecutor or Legal Affairs Bureau; and services relating to minor court lawsuit

certificate of seal registration must ordinarily be presented whenever opening a bank account, filing notifications with administrative authorities, purchasing assets for which name registration is required (real estate, securities, vehicles, telephone lines, etc.), and concluding agreements with business partners.

70. All changes to information registered with the Legal Affairs Bureau (e.g. amount of share capital, board members, names and domiciles of partners) must be promptly reported by providing notification to the Legal Affairs Bureau within two weeks of the change (*Companies Act* Arts.909, 915). Any persons can obtain the extract of registered matters pursuant to Articles 10 and 11 of the *Commercial Registration Act*.

71. The Legal Affairs Bureau maintains information in the commercial registry for an indefinite duration and application documents for five years. When a company is liquidated, the Legal Affairs Bureau maintains registered information on the liquidated company for a period of twenty years (*Commercial Registration Ordinance* Art.34). In addition, a liquidator is obliged to maintain the books of the liquidating company as well as any material data regarding the business and liquidation of that company for a period of ten years (*Companies Act* Art.508).

### Stock companies' share registries

72. Stock companies are obliged to prepare and maintain a shareholder registry (*Companies Act* Art.121). Matters recorded in a stock company's shareholder registry include: the names and addresses of shareholders; number of shares held by the shareholders; date when the shareholder acquired the shares; and, where the stock company is a company issuing share certificates, the serial numbers of share certificates representing the shares (Art.121). Stock companies are obliged to keep their shareholder registry at their head offices in Japan or, where there is an administrator of the shareholder registry, at the administrator's business office (Art.125(1)). Shareholders and creditors may make requests at any time for the inspection or copying of the registry (Art.125(2)). Membership companies are not obliged to maintain share registries, however, they would need to have this information available in order to comply with the obligation to file and update this information with the Legal Affairs Bureau.

73. The names and addresses of the shareholders of publicly listed stock companies are maintained electronically in a transfer account held in Japan's Securities Depository Centre, and also by financial institutions such as trust banks and securities companies.

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representation. As of 31 December 2011, there were 20 275 judicial scriveners and 415 judicial scrivener corporations in Japan.



### Tax law

74. Article 2 of the *Corporation Tax Act* defines “domestic corporation” as a corporation having its head office or principal place of business in Japan. The effective place of management is not relevant in this regard. Domestic corporations are liable for tax on worldwide income. Corporation tax is paid under the self-assessment system. All domestic companies must file a corporation tax return, with accounting records and other materials, to the tax authorities, in principle, within two months of the end of each business year and must pay tax as reported on the return (Art.74). If a company fails to file correct returns, tax authorities reassess them. Local inhabitant’s tax and enterprise tax are levied by local authorities on companies based on corporate income.

75. Companies are obliged to file “Form Appendix 2” with their corporate tax return, which includes information on the names, addresses, voting rights and ownership interest of the company’s three largest shareholder groups which consist of one shareholder and its family (*Corporation Tax Act* Arts.74, 145; *Ministry of Finance Ordinance* Appendix 2). Such information is checked through Tax Office audits and other means to allow the tax authorities to determine whether a stock company is a “family company” (douzoku kaisha)<sup>12</sup> and also for determining the correct application of Japan’s transfer pricing rules, controlled foreign corporation rules, and corporate inversion rules. Under Japan’s tax system, the percentages of shareholdings may have an effect on tax obligations.

76. Additionally, when a Japanese company is newly established in Japan in accordance with the *Companies Act*, a tax notification pertaining to the start-up must be submitted to the tax authorities on or within two months of the date of establishment (*Corporation Tax Act* Art.148). Tax notifications specify the place for tax payment, the object of the business, and the date of establishment (Art.148). Article 63 of Japan’s *Ministry of Finance Ordinance* specifies additional documents that must accompany the tax notification, which include a copy of the articles of incorporation, a copy of the registration of establishment, and a certified copy of the shareholder registry. The registration of establishment includes the name, address, and date of establishment of the company and the name and address of the company’s representatives. Tax notifications are maintained by the National Tax Agency for an indefinite duration.

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12. A family company (douzoku kaisha) is a company in which three or less shareholders maintain certain special relations prescribed by Cabinet Order and hold more than 50% of the total number or amount of issued stock or investments of the company (*Corporation Tax Act* Art.2(10)).



### *Ownership information on foreign companies*<sup>13</sup>

77. A “foreign company” (gaikoku kaisha) is defined in Article 2 of the *Companies Act* as any legal person incorporated under the law of a foreign country or such other foreign organisation that is of the same kind as, or similar to, a domestic company. Foreign companies can operate in Japan by establishing a representative office, branch office, or a subsidiary company.

78. Representative offices are established as locations for carrying out preparatory and supplemental tasks aimed at enabling foreign companies to engage in full-scale business operations in Japan. Representative offices may conduct market surveys and collect information, but they are not permitted to engage in sales activities. A representative office cannot ordinarily open bank accounts or lease real estate in its own name, so agreements for such purposes must be signed by the head office of the foreign company or the representative at the representative office in an individual capacity. The establishment of representative offices does not require registration under the *Companies Act* and no tax notifications are required (as they are not subject to corporate tax). However, representative offices established by foreign banks, insurance companies, securities companies, or other financial institutions are exceptions; prior notification must be provided to the Financial Services Agency for such representative offices (as stipulated in the *Banking Act*, *Financial Instruments and Exchange Act* and other laws).

79. Foreign companies wishing to engage in business operations in Japan must establish a branch office or a subsidiary company. A Japanese branch office is a business location that provides services in Japan for the foreign parent company, and ordinarily is not expected to engage in independent decision-making. A branch office does not have its own legal corporate status, but instead is deemed to be encompassed within the corporate status of the foreign company. Generally, the foreign company is ultimately responsible for all debts and credits generated by the activities of its Japanese branch office. A Japanese branch office, however, may open bank accounts and lease real estate in its own name. Branch offices must register with Japan’s Legal Affairs Bureau and provide a tax notification to the tax authorities.

80. A foreign company establishing a subsidiary company in Japan must choose to establish the subsidiary company as a stock company (kabushiki kaisha), limited liability company (godo kaisha), or similar entity stipulated by Japan’s *Companies Act*. Both general partnership companies (gomei kaisha)

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13. According to the *Terms of Reference*, where a company or body corporate incorporated in one jurisdiction has a sufficient nexus to another jurisdiction including being resident there for tax purposes (for example by reason of having its place of effective management or administration there), that other jurisdiction will also have the responsibility of ensuring that ownership information is available.

and limited partnership companies (*goshi kaisha*) are granted corporate status under the *Companies Act*, but Japan's Legal Affairs Bureau reports that they are rarely chosen in practice because equity participants bear unlimited rather than limited liability. Subsidiary companies must also register with Japan's Legal Affairs Bureau and provide a tax notification to the tax authorities.

### Registration of foreign companies

81. The *Companies Act* requires a foreign company that intends to carry out transactions continuously in Japan (*i.e.* more than marketing or other representative office type activities) to register with the competent branch of the Legal Affairs Bureau (Arts.817, 818, 933). Such companies are obliged to have one or more representatives domiciled in Japan (Art.817). The items to be listed in the registration are determined in accordance with the same kind of company or the most similar kind of domestic company in Japan (Art.933). Article 821 of the *Companies Act* provides that “a foreign company that has its head office in Japan or whose main purpose is to conduct business in Japan may not carry out transactions continuously in Japan”. Such companies are obliged to incorporate as Japanese companies under the *Companies Act*.

82. Branch offices of foreign companies must register in accordance with the registration requirements for domestic Japanese companies of most similar form to that of the foreign company (*i.e.* as either a stock company, general partnership company, limited partnership company or limited liability company) (*Companies Act* Art.933(2)). In order to select the most similar form of Japanese company and to determine the information to be registered, reference must be made to the foreign company's articles of incorporation, establishment certificate, registration certificate, and other such documentation. Once the details of the branch office to be registered (*e.g.* the address of the branch office, the representative in Japan, the date of establishment of the branch office) are determined, the information that must be registered can be ascertained. Document(s) certifying the information to be registered must be submitted when applying for registration of the establishment of a branch office, and the certified document(s) must be issued by the competent authorities in the home jurisdiction of the foreign company.

83. Branch offices registering as membership companies are obliged to register the same information as required to be registered by domestic membership companies (*Companies Act* Art.933). Accordingly, branch offices are obliged to register *inter alia* the names and domiciles of their partners (and, if the partner representing a membership company is a legal person, the name and domicile of the person who is to perform the duties of such partner) with the Legal Affairs Bureau (*Companies Act* Arts.912, 913, 914). Branch offices are considered permanent establishments for Japanese tax purposes.

84. Subsidiary companies are established through registration with the Legal Affairs Bureau. The application date for registration is the date of establishment, and the company may carry out business operations from that date (*Companies Act* Art.49). Subsidiary companies are obliged to register the same information required to be registered for domestic companies. As such, subsidiary companies incorporated as Japanese membership companies are obliged to register *inter alia* the names and domiciles of their partners (*Companies Act* Arts.912, 913, 914).

85. A branch office or subsidiary company registered as a stock company is not obliged to register the names and addresses of its shareholders (*Companies Act* Arts.27, 911(3)). Branch offices and subsidiary companies are obliged to ensure that information registered with the Legal Affairs Bureau is current. Applications for registration of changes to registered information must be submitted to the Legal Affairs Bureau within two weeks of the changes for subsidiary companies, and within three weeks of the changes for branch offices (*Companies Act* Arts.909, 933).

86. Once registration of establishment has been completed for a Japanese branch office or a subsidiary company, a certificate of registered company information<sup>14</sup> must be obtained from the Legal Affairs Bureau.

#### Tax law

87. A foreign corporation operating through a branch office or any other permanent establishment is only subject to taxation on Japanese-source income, with such tax generally being imposed through withholding taxation imposed at source on a gross basis at the time of payment. Article 2 of the *Corporation Tax Act* defines “foreign corporation” as any corporation which is not a domestic corporation, meaning a foreign company that does not have its head office or principal place of business in Japan. In general, foreign companies with Japanese-source income must file a corporation tax return, together with a balance sheet, a statement of profit and loss and other materials, to the tax authorities within two months of the end of each business year and must pay tax as reported on the return (Arts.141(i), 145).

88. Foreign companies with a branch office in Japan (*i.e.* a permanent establishment) are obliged to file “Form Appendix 2” with their corporate tax

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14. The certificate on registered company information is a document officially certifying a company’s registered information. It must ordinarily be presented whenever opening a bank account, filing notifications with administrative authorities, purchasing assets for which name registration is required (real estate, securities, vehicles, telephone lines, etc.), and concluding important agreements with business partners.

return, which includes information on the names, addresses, voting rights, and ownership interest of the company's three largest shareholders (*Corporation Tax Act* Arts.74, 145; *Ministry of Finance Ordinance* Appendix 2). Accordingly, limited information is available in Japan regarding the ownership structure of foreign incorporated companies operating through a branch that is registered as either a stock company or membership company.

89. Additionally, branch offices of foreign companies need to maintain information about their shareholders to comply with Japan's CFC rules, corporate inversion rules and transfer pricing rules for tax assessment of the foreign companies:

- a company of which over 50% of its shares is held by residents and its related non-residents through a foreign company in a low tax jurisdiction must file a tax return with Form Appendix 17(3) Table 1 (the same form is required to be used for applying the corporate inversion rules); and
- a company which made transactions with its foreign affiliated person must file a tax return with Form 17(4). A foreign affiliated person is defined as a foreign corporation that has a relationship with the said company whereby either company holds, directly or indirectly, shares or capital contributions that account for 50% or more of shares of or capital contributions of the other company. Form Appendix 17(4) includes the name and address of the foreign affiliated person and the capital ties between the foreign affiliated person and domestic company. The form does not require ownership information but such companies must maintain ownership information in order to correctly file tax returns.

90. When a branch office of a foreign corporation is newly established in Japan in accordance with the *Companies Act*, a tax notification pertaining to the start-up must be submitted to the tax authorities within two months from establishment (*Corporation Tax Act* Art.149). Tax notifications must also be submitted when a foreign corporation generates income subject to corporate tax in Japan without establishing a branch office or when carrying out business activities through locations or parties meeting certain conditions instead of opening a branch office.<sup>15</sup> The tax notification must set out:

15. Circumstances where a foreign corporation carrying out activities in Japan without establishing a branch office is required to submit a tax notification include: when construction, installation, assembly or other works, or control and supervision of such works extends for a period of more than one year; and when engaging in business through: parties having and frequently exercising the authority to conclude business agreements on behalf of that foreign corporation; or parties storing assets on behalf of that foreign corporation in a volume/

- the place of tax payment and the name of person in charge of management or administration of business performed or assets in Japan;
- the object and the kind of the business being performed in Japan, or the kind and the existing place of the assets in Japan; and
- the date of starting business or the scheduled start of business in Japan, or the date of possessing the assets in Japan.

91. Sections 64 and 65 of the *Ministry of Finance Ordinance* specify additional documents that must be submitted in the tax notification when a foreign company has a permanent establishment in Japan. Such documents include: the balance sheet as of the time when that foreign company has a permanent establishment in Japan; Japanese translation of the articles of incorporation; and documents stating the address of the permanent establishment in Japan. Tax notifications are maintained by the tax authorities for an indefinite duration.

92. Japan's National Tax Agency reports that it has not experienced difficulties in obtaining ownership information of foreign incorporated companies having a permanent establishment in Japan for domestic tax purposes or for responding to international exchange of information requests as a result of the information not being maintained. Input received from Japan's peers confirms this.

#### *Ownership information held by directors and officers*

93. Directors and officers of Japanese companies are not statutorily required to maintain ownership information in respect of the company. These requirements lie on the company. One or more representatives of a foreign company that intends to carry out transactions continuously in Japan must be domiciled in Japan (*Companies Act* Art.817). There is no similar express legal requirement for domestic companies. Japan's authorities report, however, that as a matter of course domestic companies shall have one or more representatives who are domiciled in Japan.

#### *Ownership information held by service providers*

94. Independent legal professionals and accountants, including judicial scriveners, certified public accountants, and certified public tax accountants (CPTAs) are subject to Japan's anti-money laundering (AML) legislation. As such, they are obliged to maintain certain information on their clients.

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quantity corresponding to the ordinary requirements of customers and delivering those assets in response to customers' requests (*Corporation Tax Act* Art.149).

95. The *Act on the Prevention of Transfer of Criminal Proceeds (PTCPA)*, Japan’s current AML legislation, covers a range of financial institutions<sup>16</sup> and designated professions and businesses (“specified business operators”). In particular, Article 2 of the *PTCPA* lists the following specified business operators:

- financial institutions;
- real estate agents and professionals;
- postal service providers;
- legal professionals and accountants: lawyers, judicial scriveners, certified administrative procedures specialists, certified public accountants, and CPTAs; and
- trust companies.<sup>17</sup>

96. The *PTCPA* contains various provisions relating to customer identification (Arts.4, 5), record keeping (Arts.6, 7), the role and powers of Japan’s Financial Intelligent Unit (Arts.3, 11, 12, 14), and sanctions (Arts. 23 *et seq*). The *PTCPA* is implemented by the Cabinet Order for Enforcement of the *PTCPA* (“the *Order*”) and the Ordinance for enforcement of the *PTCPA* (“the *Ordinance*”).

97. Article 4 of the *PTCPA* requires specified business operators (excluding attorneys<sup>18</sup>) to verify customer identification data (*i.e.* name and domicile) and date of birth or name and location of the head/main office<sup>19</sup> respectively

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16. Article 1(2) of the *PTCPA* includes *inter alia* the following financial institutions in the definition of “specified business operator”: banks; shinkin banks; insurance companies; securities companies; moneylenders; futures commission merchants; financial leasing companies; credit card companies; and money and currency exchangers.
17. Trust companies are licensed and supervised by Japan’s Financial Services Agency (FSA)/Local Financial Bureau.
18. Article 8 of *PTCPA* provides that customer due diligence of attorneys shall be prescribed by the rules of the Japan Federation of Bar Associations in line with such cases as accountants and CPTAs.
19. Financial institutions are required to verify the name and location of the head or main office of a legal person using either a “certificate of registered matters” “seal registration certificate” or any other document issued by a “public agency” which includes this information (*PTCPA* Article 4(1); *Ordinance* Article 4(ii), (a) (b)). The certificate of registered matters contains additional information on a company’s date of establishment, lines of business, capital, number of shares issued (and rules concerning transfer of shares) as well as the name, address, and date of nomination of the company’s director. The seal registration certificate, which registers a company’s seal, contains additional information including the

for natural and legal persons prior to establishing business relationships. In addition, Article 4(2) provides that where the natural person who is actually conducting the transaction is not the customer concerned, the specified business operator is obliged, in addition to identifying the customer concerned, to identify the natural person who is actually conducting the specified transaction. Specified business operators are also obliged to perform customer due diligence on the representative agent acting on behalf of a legal person. In addition, there are specific instances in which identification of beneficial ownership is called for under the *Order*. For example, financial institutions (which include trust companies) are required to conduct customer due diligence on both the settlor and beneficiary of a trust and on the beneficiary of an insurance contract (*Order* Arts.5, 8(1)(i)(c), (d), (g)).

98. Upon conducting customer identification, specified business operators are obligated to prepare records and maintain these for seven years from the day on which the business relationship was terminated (*PTCPA* Art.6). The following records are required to be maintained (*Ordinance* Art.10(1)):

- name and other matters sufficient for identifying the person for whom identification was conducted;
- name of the person who conducted the customer identification and name of the person who prepared the customer identification records;
- the date and time the customer identification document was presented in cases where the customer identification was conducted face-to-face;
- the type of transaction for which customer identification was conducted;
- the method by which customer identification was conducted;
- the title of the customer identification documents, or copies thereof, the mark or number attached thereto, sufficient for identifying the document or copy thereof; and
- the account number for searching transaction records.

99. Failure to conduct customer due diligence or maintain records as required by the *PTCPA* is an offence. The administrative authorities can order specified business operators who commit the offence to take remedial actions (Art.16). Where the specified business operators commit an offence to the order, they are subject to imprisonment with work for not more than two years or a fine of not more than JPY 3 million (EUR 26 086), or both (Art.23).

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company's seal registration number, the name and date of birth of the company's president or principal officer as well as seal of the Regional Legal Affairs Bureau (*i.e.* the local office of the Ministry of Justice) responsible for the registration.



100. Practicing attorneys must register with the Japan Federation of Bar Associations (JFBA) through the local bar association of which they are a member. Article 8 of the *PTCPA* delegates authority for customer identification rulemaking to the JFBA. JFBA implemented this obligation by adopting the *Regulation Relating to Identification of Clients and Record-Keeping*. The Regulation, which came into force in July 2007, requires practicing attorneys to identify and verify the identification data of their clients (when the client is a natural person, by his/her name, address and date of birth, and when the customer is a legal person, by its name and location of head office or main office), based on documents prepared by the government or other authorities, when administering a client's account at a financial institution or other assets in excess of JPY 1 million (EUR 8 695) in connection with handling legal matters. In particular, customer identification is required in the following situations:

- buying and selling of real estate;
- investing for the purpose of establishing or managing a company, or contributing similar funds;
- establishment of a legal person or a similar entity;
- conclusion of a trust contract; or
- buying and selling of a company.

101. The JFBA Rules require attorneys to keep copies of customer identification documents for five years after the completion of transaction (*Regulation Relating to Identification of Clients and Record-Keeping* Art.3). Attorneys are subject to supervision for compliance with these obligations by the JFBA, which can take disciplinary actions for non-compliance, such as reprimand, suspension of business for not more than two years, order for withdrawal from the association, or expulsion.

102. Japan's Financial Intelligence Unit reports that financial institutions and specified business operators in Japan are aware of their obligations under the *PTCPA*. Japan's authorities have indicated that the strong compliance culture in Japan helps to ensure that obligations under the *PTCPA* are followed. Each of the respective Japanese authorities which regulate different service provider professions in Japan has oversight authority under the *PTCPA* (e.g. to the National Tax Agency as regards CPTAs).

### *Ownership information held by nominees*

103. Japanese law does not recognise the concept of nominee ownership found in many common law jurisdictions, and this activity is not prohibited. While shareholders can transfer their economic benefits derived from the dividends on a contractual basis, companies are required to pay such dividends



to legal owners. Shareholders must register their own names in order to exercise voting rights or to receive dividends. To date, Japanese authorities have no experience with nominees.

104. Although the concept of nominee shareholding is not recognised in Japan, Japan's AML legislation establishes an obligation regarding the identification of customers by specified business operators. Specified business operators who are likely involved in providing nominee services which are specified transactions (attorneys<sup>20</sup>, accountants, and CPTAs) are obliged under the *PTCPA* to conduct customer due diligence and are thus obliged to identify any customer for whom they act as nominees.<sup>21</sup>

105. Article 228 of the *Income Tax Act* provides that a person who receives the payment of interest or a dividend in relation to operations as a registered person on behalf of another person (*e.g.* intermediary) shall file an annual report with the tax authorities noting *inter alia* the names and addresses of the parties concerned and particulars concerning the payments made (dates, amounts, and source).

106. Moreover, Japan's tax authorities have powers to request information from any Japanese resident, whether this relates to Japanese taxes or foreign taxes, to respond to an international request for information (as further described under Part B) and these could be used to obtain information from a person believed to be acting as a nominee.

107. The input received from Japan's peers does not indicate that Japan has not responded to an international exchange of information request as a result of information not being maintained by nominee shareholders.

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20. Article 8 of *PTCPA* provides that customer due diligence of attorneys shall be prescribed by the rules of the Japan Federation of Bar Associations in line with such cases as accountants and CPTAs.
21. Article 4(2) of the *PTCPA* provides that where the natural person who is actually in charge of conducting the specified transaction with the specified business operator is not the customer concerned (*e.g.* where a company representative carries out a specified transaction with a specified business operator on behalf of the company), the specified business operator is obliged, in addition to conducting customer identification of the customer concerned, to conduct customer identification of the natural person who is actually in charge of conducting the specified transaction. Upon conducting customer identification, specified business operators are obligated to immediately prepare records and maintain these for seven years from the day on which the business relationship is terminated (*PTCPA* Art.6).

### ***Bearer shares (ToR A.1.2)***

108. Japanese law does not allow the issuance of bearer shares.

109. The ability to issue bearer shares was prohibited in 1990, with the amendment of Japan's *Commercial Code*. The rules governing the transfer of shares in the *Companies Act* require the name and address of any person who acquires shares to be recorded in the company's shareholder registry. A stock company must prepare a shareholder register that records the names, addresses and other details of shareholders (*Companies Act* Art.121). The rules governing the transfer of shares are set out in Article 130 of the *Companies Act*: "transfer of shares shall not be perfected against the stock company and other third parties unless the name and address of the person who acquires those shares is stated or recorded in the shareholder registry". Article 216 of the *Companies Act* requires stock companies that issue share certificates to state on the share certificates the name of the company and the number of shares represented by the certificate. The identification of the shareholder is not required on the certificate, but their name must be written in the shareholder registry pursuant to the provisions of Article 121 of the *Companies Act*.

110. Article 296 of the *Companies Act* provides that stock companies are obliged to hold an annual shareholders meeting. Any stock company that has bearer shares in circulation (issued prior to 1991) must give public notice prior to the shareholders meeting (former *Commercial Code* Art.232 (applicable to bearer shares)).<sup>22</sup> Failure to give public notice by a company with bearer shares in circulation is an offence and subjects the director to a non-penal fine (former *Commercial Code* Art.498). Japan's officials report that from 1991 to 2011 three stock companies made public notice in the official gazette. Japan's officials also report that these three stock companies have since converted their bearer shares into registered shares (as stated in the companies' articles of incorporation). Furthermore, there is no indication that ownership and identity information on bearer shareholders is an issue in Japan based on input received from Japan's peers.

### ***Partnerships (ToR A.1.3)***

#### *Types of partnerships*

111. Japanese law provides for the creation of four types of partnerships: civil code partnerships (nin'i kumiai, or "NK"); silent partnerships (tokumei kumiai, or "TK"); limited liability partnerships (yugen-sekinin jigyo kumiai,

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22. The former *Commercial Code* is still legally valid and applies to bearer shares based on Article 12 of the supplementary provisions in the *Act for Partial Revision of the Commercial Code* (1990).

or “LLP”); and investment limited partnerships (toushi jigyou yugen sekinin kumiai or “investment LPS”). As at April 2010, approximately 4 000 LLPs and 2 200 investment LPSs were registered with Japan’s Legal Affairs Bureau. It is not known how many NKs and TKs exist in Japan due to their contractual nature. All types of partnerships in Japan do not have distinct legal personalities and are treated as pass-through arrangements for tax purposes. Therefore, partners are taxed on the bases of the profits or losses allocated to them under the partnership agreement. Partners, except for partners of a NK or TK, generally have limited liability for the partnership’s liabilities.

### NKs, civil code partnerships

112. A NK is defined in Article 667(1) of Japan’s *Civil Code* by reference to a partnership contract. Article 667(1) provides that “a partnership contract shall become effective when each of the parties promises to engage in joint business by making a contribution”. Partners of a NK conduct the partnership business jointly (Art.670) and share in the profits and losses in proportion to their respective contribution unless otherwise agreed among the partners (Art.674). Each of the partners have unlimited liability for the obligations of the partnership in proportion to his or her respective contribution unless otherwise agreed among the partners (Art.675) and each own a portion of the partnership assets (Art.668). NKs themselves cannot conduct business in their own names, do not have any legal status and cannot hold real estate or own assets. Because NKs are not required to be registered, it is not possible to know the exact number of NK arrangements in Japan.

### TKs, silent partnerships

113. A TK is a silent partnership arrangement provided for under Chapter IV of Part II of the *Commercial Code*. The silent partner(s) in the TK contribute funds under the TK agreement for the operation of a specific business carried on by an operator and in return is able to participate in the profits from the operation (Art.535). In entering into a TK arrangement, the TK silent partner(s) cannot participate in the management or operation of the business (Art.536(3)). This arrangement can be characterised as a contract, and like a contract, its existence is typically not disclosed to the public. TKs do not have any legal status and cannot hold real estate or own assets. They have no income or credits for tax purposes, do not carry on business and cannot be compared to a limited partnership. Therefore, these arrangements are not under the scope of the Global Forum’s *Terms of Reference*. TKs are, however, obliged to submit to the tax authorities distribution records which include the names and addresses of the silent partners (*Income Tax Act* Art.225(1)).

### LLPs, limited liability partnerships

114. The *Limited Liability Partnership Act*, which came into force in 2005, governs LLPs. An LLP is formed when two or more individuals or corporations conclude a limited liability partnership agreement, pay the investment specified in the agreement, and register the entity with the Legal Affairs Bureau (Arts.3, 4, 57). All partners of an LLP have limited liability for the obligations of the LLP to the extent of their capital contribution in the LLP (Art.15) and must participate in the management of the LLP business (Art.13). At least one of the partners of an LLP must be an individual resident in Japan or a Japanese domestic company (e.g. a company with its head office or principal office in Japan) (Art.3(2)). LLPs are obliged to register with the Legal Affairs Bureau within two weeks from when the partnership agreement takes effect (Art.57).

### LPSs, investment limited partnership

115. The *Limited Partnership Act for Investment* governs investment LPSs. An investment LPS is formed by general partners who have unlimited liability and limited partners whose liability is limited to their capital investment (Art.9). General partners are responsible for managing the partnership's business (Art.7). Investment LPSs may only carry out specific business activities (e.g. acquisition and holding of shares and other specified investment activities) (Art.3). Investment LPSs are obliged to register with the Legal Affairs Bureau within two weeks from when the partnership agreement takes effect (Art.17).

### *Ownership information on partnerships*

#### Registration of partnerships

116. The Legal Affairs Bureau maintains publicly available registers of LLPs and investment LPSs (*Limited Liability Partnership Act* Art.57; *Limited Partnership Act for Investment* Art.17). There is no registration requirements for NKs.

117. LLPs are obliged to register with the competent branch of the Legal Affairs Bureau within two weeks from when the partnership agreement takes effect at the location of the LLPs principal office and within three weeks at the location of its secondary offices (if any) the following information (*Limited Liability Partnership Act* Art.57):

- the name, location of the office, and businesses of the LLP;

- the names, or corporate names, and the addresses of the partners (if a partner is a legal person, the name and address of a person who is to perform the duties of the partner); and
- the duration of the existence of the partnership.

118. LLPs are further obliged to notify the Legal Affairs Bureau of any change in any of the matters, including any change of partners, maintained by the Registrar within two weeks in the district in which the principal office is located and within three weeks in the districts in which the secondary offices are located (*Limited Liability Partnership Act* Art.58).

119. Investment LPSs are obliged to register with the competent branch of the Legal Affairs Bureau within two weeks from when the partnership agreement takes effect at the location of its principal office and within three weeks at its secondary offices (if any) the following information (*Limited Partnership Act for Investment* Art.17):

- the name, location of the office, and businesses of the partnership;
- the names and addresses of the general partners;
- the date on which the partnership agreement takes effect; and
- the duration of the existence of the partnership.

120. Investment LPSs are further obliged to notify the Legal Affairs Bureau of any change in any of the above matters, including any change of general partners, maintained by the Registrar within two weeks in the district in which the principal office is located and within three weeks in the districts in which the secondary offices are located (*Limited Partnership Act for Investment* Art.18). The initial application for registration of an investment LPS must be accompanied by a copy of the partnership contract, which contains the names and addresses of all of the partners and classification of general partner and limited partner for each of the partners (Arts.3(2), 27).

121. The Legal Affairs Bureau maintains information in the registry of LLPs and investment LPSs for an indefinite duration and application documents for five years. When a LLP or investment LPS is liquidated, the Legal Affairs Bureau maintains registered information on the liquidated partnership for a period of twenty years (*Commercial Registration Ordinance* Art.34).

### Tax law

122. Partnerships in Japan do not file tax returns or pay tax as they do not have distinct legal personalities and are treated as a pass-through arrangements for Japanese tax purposes. Partnership arrangements are in principle treated as

an aggregate of partners and of investors. Therefore, partners are taxed on the basis of the profits or losses allocated to them under the partnership agreement. Corporate or individual members of a partnership must recognise the income or loss arising to them under their partnership contract as the income or loss accrues. Whether or not income has been distributed from the partnership is not relevant to the timing of partnership income. The nature of the income generated by a partnership's activities will generally be retained in the hands of an individual partner, and taxed accordingly. Partners are subject to tax under the general provisions of the *Income Tax Act* and the *Corporation Tax Act*.

123. Under the *Income Tax Act*, parties distributing partnership profits to foreign partners (*i.e.* non-residents or foreign corporations) are obliged to submit information returns (and withholding returns in certain circumstances) to the Tax Office which includes the names, addresses, and distribution details of persons receiving a distribution from the partnership (*Income Tax Act* Art.225). Such returns identify the names and addresses of the foreign partners and other particulars concerning the distribution amounts and the partnership's total profit/losses. Japan's tax authorities maintain information contained in information and withholding tax returns for an indefinite period. Japan's National Tax Agency reports that Tax Offices routinely conduct examinations of parties having such obligations to ensure the fulfilment of their obligations.

124. Individual and corporate partners of an NK that has Japanese-source income/loss are obliged to maintain records corresponding to the income/loss reported on their respective individual or corporate tax returns for a period of seven (or five) years. Such records include contractual agreements, including written NK-partnership contracts (*Income Tax Law Tax Law Enforcement Ordinance* Arts.102, 103; *Corporation Tax Law Tax Law Enforcement Ordinance* Arts.66, 67). The *Civil Code* is, however, silent on the obligation for NK-partnership contracts to be in writing. Japan's National Tax Agency reports that it is, however, the normal practice for NK contracts to be in writing and that they identify the NK partners in an identifiable way. This is to ensure proper distributions of allocable NK-partnership profits/losses are made pursuant to the NK-partnership contract.

125. A standard written NK partnership contract was provided to the assessment team. The contract contains provisions regarding the rights and duties of the partners, including provision of the names, addresses, percentage ownership interests and allocation rights of the partners. The standard NK partnership contract also contains provisions regarding the maintenance of financial statements (balance sheet, profit and loss accounts, transaction records). It is recommended, however, that Japan's National Tax Agency monitor the availability of ownership and identity information for NKs, in particular any exchange of information requests that cannot be satisfied because the information is not maintained.

*Information held by service providers*

126. Specified business operators covered by the *PTCPA* are required to undertake customer due diligence when establishing a relationship with a partner acting on behalf of a partnership. (see paragraphs 94 – 102)

*Information held by the partnership or partners*

127. There is no explicit requirement in Japan's *Civil Code* for a NK to maintain information on the identity of its partners. However, knowledge of the identity of the partners is likely given the joint and several liability that rests on the partners of a NK. Furthermore, a NK must know who its partners are in order to make partnership distributions and to fulfil its statutory tax disclosure obligations (*i.e.* when a distribution is made to a non-resident partner) under the *Income Tax Act*. Each of the partners of a NK have the right to inspect the condition of the business and property of the NK regardless of whether they have a right to manage the business of the NK (*Civil Code*, Article 673). Accounting record-retention requirements under the *Income Tax Act* and *Corporation Tax Act* also requires the maintenance of a NK contract (for written contracts) which in practice identifies the names and addresses of the NK partners.

128. The partners of LLPs and investment LPSs are obliged to make a written partnership contract that contains the names and addresses of the partners (*Limited Liability Partnership Act*, Article 4; *Limited Partnership Act for Investment*, Article 3). LLPs and investment LPSs are obliged to update and maintain the partnership contract at their principal office in Japan as long as the partnership exists. After liquidation, core information of the partnership contract is retained in the competent branch of Legal Affairs Bureau (see para.122).

***Trusts (ToR A.1.4)***

129. The concept of a trust exists under Japanese law. It differs from the equivalent common law concept, most notably because there is no concept of equitable ownership and thus no separation of the legal and equitable ownership of trust assets in Japan. Trusts in Japan are primarily governed by the *Trust Act*, which sets out the basic private law rules. Japan's Ministry of Justice is the supervising authority of the *Trust Act*. The *Trust Business Act* regulates trust business in Japan. It is a specific law under the umbrella of the *Trust Act* as it sets out special rules concerning various parties involved in a trust business, including the trustee's obligations and responsibilities. Japan's Financial Services Agency is the supervising authority of the *Trust Business Act*. Japanese trusts are generally vehicles for commercial dealings and are administered by trust companies.



130. Article 2 of the *Trust Act* provides that a trust is formed by way of a trust agreement between a settlor and a trustee, a settlor's will or a settlor's declaration of trust (being evidenced by a notarised deed), whereby the trustee manages the trust properties in accordance with the objective of the trust by managing or disposing of the properties and performing any other acts necessary to achieve the trust's purpose. Trustees of Japanese trusts are the sole owners of trust assets and the true counterparty in any transactions conducted in the name of the trust. Trustees, however, may not acquire any proprietary interest in the trust assets (Art.31) or benefit from the trust assets (Art.8).

131. The *Trust Act* stipulates special provisions for the following types of commercial trusts: trusts with certificates of beneficial interest (Art.185); limited liability trusts (Art.216); limited liability trusts with certificates of beneficial interest (Art.248); and trusts with no provisions on the beneficiary (Art.258). In addition, the following types of trusts can be formed by other laws other than the *Trust Law* in Japan: specific purpose trusts (*Act on Securitization of Assets*); investment trusts (*Act on Investment Trusts and Investment Corporations*); and charitable trusts (*Act on Charitable Trust*).

132. The only limitations on who can act as a trustee in Japan is that trusts cannot be formed with a minor, adult ward, or person under curatorship serving as a trustee (*Trust Act* Art.7). There are no prohibitions for a resident of Japan to act as a trustee in relation to a trust formed under foreign law. There are license and registration qualifications under the *Trust Business Act* on persons carrying out trust business (*i.e.* trust companies) (Arts.3, 4, 7, 8, 53, 54).

### Fiduciary duties of trustees

133. Trustees in Japan owe certain statutorily prescribed fiduciary duties to beneficiaries under the *Trust Act* and *Trust Business Act*, including the duty of loyalty, the duty to segregate trust assets, and the restriction on self-dealing (*Trust Act* Arts.30-33, *Trust Business Act* Arts.28-29). Trustees of Japanese trusts are required to administer trust assets in accordance with the underlying trust agreement. In addition, trustees are obliged, upon request from any beneficiary, to report on the status of trust administration as well as the status of property that belongs to trust property (*Trust Act* Art.36). Article 28 of the *Trust Business Act* obliges trust companies to “carry out trust business with due care of a prudent manager in accordance with the main purpose of the trust”.

134. The *Trust Act* also requires trustees to prepare an annual balance sheet, profit and loss statement, trust account ledger, and general ledger reflecting the financial status of trust assets and report such matters to the



beneficiaries (Art.37). Interested persons can inspect and copy these documents and records (Art.38). Any trustee who fails to perform the obligation to prepare these documents, or has made false statements or records, is subject to a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.270).

135. Identity information on the trustees, settlors and beneficiaries of trusts in Japan should be available in Japan from any trustee properly performing its statutorily prescribed fiduciary duties (*i.e.* it would be difficult for a trustee to properly conduct its duties without knowing the identity of the settlor and the beneficiaries).

### Trust business

136. Trusts in Japan are typically formed by trust companies. Trust companies are regulated under the *Trust Business Act*. Trust business is defined as “the business of accepting trusts” and includes provision of services to form or create a trust, acting as a trustee or arranging for any person to act as trustee, and provision of trust administration services (*Trust Business Act* Art.2(1)). Resident trustees and resident administrators of foreign trusts are subject to the *Trust Business Act* if they conduct a “trust business” in Japan. A person who administers a foreign trust, but who is not a trustee, would normally do so as part of a trust business or as an income-earning activity.

137. The *Trust Business Act* provides that no persons other than business corporations licensed by the Prime Minister may conduct a trust business (Art.3). The power to license and register trust companies has been delegated from the Prime Minister to either Japan’s Financial Services Agency or Local Finance Bureaus under the Ministry of Finance (Art.87).

138. Trust companies can be banks, other financial institutions, non-financial institutions, or general incorporated companies that are licensed to conduct a trust business under the *Trust Business Act*. As of March 2010, there were 44 banks operating as trust companies with JPY 847 trillion (EUR 7.4 trillion) in trust assets and non-financial trust companies with trust assets of JPY 115 billion (EUR 1 billion).

139. The *Trust Act* allows persons to undertake “self-trusts” as prescribed by Article 3(iii) of the *Trust Act*, *i.e.* “by way of writing on notarised deeds or other documents matters necessary for specifying said purpose and property and other matters prescribed by ordinances of the Ministry of Justice or by way of recording said matters on an electromagnetic medium.” In the case of self trusts, the trustee is either the corporate settlor itself or a related person of the corporate settlor and part of the beneficiary rights to the trust is owned by a related person of the corporate settlor. A person who forms a self-trust is obliged to register under the *Trust Business Act* if the trust has more than 50 beneficiaries (*Trust Business Act* Art.50(2); *Ordinance for Enforcement of the Trust Business Act* Art.15(2)).

140. When a trust company accepts a trust under a trust agreement, it is obliged to maintain and deliver contract documents specifying *inter alia* the following matters to the settlor of the trust without delay (*Trust Business Act*, Article 26):

- the year, month, and day of conclusion of the trust agreement;
- the name of the settlor and the trade name of the trustee;
- matters concerning the beneficiaries (*e.g.* names and addresses); and
- the purpose and matters concerning the trust (including matters concerning the method of management or disposition of trust property).

141. Trust companies are also obliged to prepare a report on the status of trust property for each accounting period (which cannot exceed one year) and deliver it to the beneficiaries of the trust property (*Trust Business Act* Art.27(1)). Failure to deliver information regarding trust particulars to the beneficiaries, or delivering false information to the beneficiaries, is an offense and subjects the representatives of a trust company to imprisonment with work for not more than six months, a fine of not more than JPY 500 000 (EUR 4 348), or both (Art.96(vii) and (viii)).

142. Trust companies and persons who form self-trusts are both included as “specified business operators” under Japan’s *PTCPA* and are therefore subject to AML obligations, including customer due diligence and record-keeping. Article 4 of the *PTCPA* requires trust companies, or persons who form self-trusts, to identify their customers and verify customer identification. The Order of Enforcement of the *PTCPA* clarifies that customer due diligence must be conducted on both the settlor and beneficiaries of a trust (Arts.5, 8(1)(i)(c)). Upon conducting customer identification, trust companies and persons who form self-trusts are obliged to immediately prepare records and maintain these for seven years from the day on which the business relationship is terminated (Art.6).

143. Japan’s administrative authorities may, to the extent necessary for the enforcement of obligations under the *PTCPA*, including the implementation of the requirement for customer identification, collect reports from and conduct on-site inspections of trust companies (Arts.13, 14). In addition, Japan’s tax authorities have powers to obtain information on trusts, including information on the identity of the settlor, trustee and beneficiaries. As trust companies are regulated by the Financial Service Agency, the Agency also has a full range of administrative powers to access information held by trust companies. The *Income Tax Act* (Art.235(2)) and the *Corporation Tax Act* (Art.156-2) provide that the officials in charge of the National Tax Agency, the Regional Taxation Bureaus, or Tax Offices may ask government and public offices and other related governmental organisations to co-operate so as to inspect, or to provide books and documents and materials relevant to the inspection conducted by the said officials.

### *Tax laws*

144. The general rule applying to the taxation of trusts in Japan is that profits/expenses generated in a trust is/are attributed to its beneficiaries (*i.e.* taxed at the beneficiary level) regardless of whether the trust's income is distributed to the beneficiaries or not. That is, beneficiaries are taxed as if they directly own the assets and liabilities in the trust. In cases where no beneficiaries have been designated, income generated in a trust is attributed to the settlor (*i.e.* taxed in the hands of the settlor). There are in principle, however, three ways in which income from trust assets can be taxed for Japanese tax purposes:

- taxation on the beneficiary at the time the income accrues (this is the general rule of trust taxation);
- taxation on the beneficiary at the time the income is distributed to the beneficiary (this includes certain collective investment trusts and pension and retirement trusts); and
- taxation as a corporation at the time the income accrues to the trustee (this includes trusts which are allowed to issue beneficiary rights in the form of securities).

145. Section 227 of the *Income Tax Act* provides that a trustee of a trust (excluding collective investment trusts, defined retirement and pension trusts, and trusts taxable as corporations) is obliged to submit a Statement of Trust to the tax authorities within one month of the end of each business year where the trustee is a trust company or by 31 January of each year where the trustee is not a trust company (*e.g.* a relative acting as a trustee of a private trust). The form of the Statement of Trust is specified in Article 96(4) of the *Ministry of Finance Ordinance* and the particulars that must be filed with Japan's tax authorities include:

- the name and address of the beneficiary, settlor, and trustee;
- when a beneficiary changes, the date of the change and its reason;
- the terms of the trust (trust deed);
- the objectives of the trust;
- profit and loss accounts and balance sheet information regarding the financial status of the trust; and
- the amount of profit (if any) distributed to the beneficiary.

146. The National Tax Agency reports that Japan's income tax laws apply in a non discriminatory manner. Consequently, resident trustees of foreign trusts are obliged to file the Statement of Trust which contains particulars on

the ownership of the foreign trust (regardless of whether the trust generates Japanese source income) (*Income Tax Act* s.227). As noted above, section 227 of the *Income Tax Act* does not apply to trustees of collective investment trusts, defined retirement and pension trusts, and trusts taxable as corporations. These types of trusts are, however, subject to the identification and record-retention requirements under the *Trust Business Act* and the *PTCPA*.<sup>23</sup>

### *Identity Information maintained by service providers*

147. Financial institutions and trustees acting in a professional capacity are subject to the *PTCPA* and are obliged to verify the identity of the beneficiaries and settlors of any trusts which are their customers. Other specified business operators covered by the *PTCPA* are required to undertake customer due diligence when establishing a relationship with a trustee acting on behalf of a trust (see paragraphs 94 – 102)

### ***Foundations (ToR A.1.5)***

148. It is possible to form a foundation in Japan under the *General Incorporated Associations and General Incorporated Foundations Act (GIAGIF Act)*. Foundations in Japan are typically formed for charitable purposes. The *GIAGIF Act* provides for the establishment of general incorporated associations (shadan hojin) and general incorporated foundations (zaidan hojin). Both general incorporated associations and general incorporated foundations are granted separate legal status under the *GIAGIF Act* (Art.3) and are obliged to register with a local office of Japan's Legal Affairs Bureau (Arts.22, 163). General incorporated associations and general incorporated foundations are also obliged to have one or more resident representatives.

149. The members of a general incorporated association own the general incorporated association. A legal person as well as a natural person may be a member of a general incorporated association. However, as opposed to companies, technically no contribution is required from the members of the

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23. In addition to the record-retention requirements under the *Trust Business Act*: trustees of collective investment trusts are obliged to submit to the tax authorities a form which specifies the name and address of the beneficiary and the distribution amount pursuant to Article 225 of the *Income Tax Act*; trustees of defined retirement and pension trusts are obliged to withhold tax on payments to beneficiaries and submit to the tax authorities a certificate of withholding tax which specifies the name and address of the beneficiaries pursuant to Article 226 of the *Income Tax Act*; and trustees of trusts taxable as corporations are subject to the record-keeping retention requirements under the *Corporation Tax Act* (detailed in section A.2 of this report).

association. No member may be granted rights to receive any dividends or liquidation dividends (Art.11). If the association has a board of directors, each of the representative directors and other designated directors may conduct corporate affairs in accordance with the board's decisions (Arts.90 and 91). If the association has no board of directors, each director may conduct corporate affairs in accordance with decisions made by a majority of the directors (Art.76).

150. A general incorporated foundation has no members. Each of the representative directors and other designated directors (Arts.197, 90, 91) may conduct corporate affairs in accordance with the decisions of the board of directors although certain material matters of the foundation must be decided by the board of councillors (Art.178). Directors of a foundation are elected at the board of councillors' meeting (Arts.177, 63), and representative directors are elected at the board of directors' meeting (Arts.197, 90).

### *Ownership information on foundations*

#### Registration of foundations

151. General incorporated associations and general incorporated foundations are obliged to register their incorporation with the competent branch of the Legal Affairs Bureau at the address of their principal office (*GIAGIF Act* Arts.22, 163). The applications for registration of a general incorporated association and a general incorporated foundation both require *inter alia* the following information (Arts.301, 302):

- the name and purpose;
- the location of the principal office and branch offices;
- if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution, such provisions;
- the names of the foundation councillors, directors, and auditors; and
- the name and address of the representative director.

152. General incorporated associations and general incorporated foundations must also attach to their application for registration their notarised articles of incorporation, which specify *inter alia* the names and addresses of the founders and, in the case of a general incorporated association, the names and addresses of the members (general incorporated foundations have no members) (*GIAGIF Act* Arts.10, 11, 13, 152, 153, 155, 318, 319). Articles of incorporation are also required to be maintained at the entity's principal office in Japan (Arts.14, 156). Associations and foundations are further obliged to notify the Legal Affairs Bureau within two weeks of any change

to the particulars previously registered (Art.303). The Legal Affairs Bureau maintains information in its registry of associations and foundations for an indefinite duration and maintains application documents for five years. When a foundation is liquidated, the Legal Affairs Bureau maintains registered information on the liquidated foundation for a period of twenty years (*Commercial Registration Ordinance* Art.34).

### Information maintained by the foundation

153. General incorporated associations are obliged to prepare and maintain membership registries listing the names and addresses of their legal members (*GIAGIF Act* Art.31). The membership registry must be kept at the foundation's principal office in Japan and be available for inspection by the foundation's members (Art.32).

154. General incorporated associations and general incorporated foundations are obliged to prepare and maintain accurate accounting books, balance sheets, profit and loss statements, business reports, and detailed annexed statements thereof (*GIAGIF Act* Arts.120-129, 199). The accounting books, amongst other things, identify beneficiaries (if any) who have received payments from the foundation or association. Accounting books must be retained for 10 years from the time they are closed (Arts.120, 199).

155. General incorporated associations and general incorporated foundations are further obliged to prepare and maintain notarised articles of incorporation, which specify *inter alia* the names and addresses of the founders and, in the case of a general incorporated association, the names and addresses of the members (foundations have no members) (*GIAGIF Act* Arts.11, 152, 155, 318, 319). Articles of incorporation are required to be maintained at the at the foundation's/association's principal office in Japan (Arts.14, 156).

### Tax Law

156. Under Japan's *Corporation Tax Act*, general incorporated associations and general incorporated foundations (foundations) are categorised by way of their organisational design and contents of their articles of incorporation. In principle, foundations are categorised as either: foundations whose income is subject to corporate tax; or foundations whose income derived from profit making businesses is subject to corporate tax when it conducts a specified business (profit-making business). The former are required to submit tax notifications to the tax authorities at the time of establishment, while the latter are required to submit notification of commencement of profit-making business to the tax authorities only when they commence profit-making business operations (*Corporation Tax Act* Arts.148, 150). The Legal Affairs Bureau provides information to the National Tax Office concerning the

registration of incorporation of general incorporated associations and general incorporated foundations. Based on the information provided by the Legal Affairs Bureau, the tax authorities direct foundations not having submitted their tax notifications to do so.

### *Information held by service providers*

157. Specified business operators covered by the *PTCPA* are required to undertake customer due diligence when establishing a relationship with a foundation or association who is a customer (through a natural person who is actually in charge of conducting the specified transaction with the specified business operator on behalf of the customer) (see paragraphs 94-102).

### ***Enforcement provisions to ensure availability of information (ToR A.1.6)***

158. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce obligations to retain identity and ownership information.

159. The *Companies Act* provides a variety of penalties to ensure that accurate information is maintained on the legal ownership and control of companies incorporated in Japan and foreign companies conducting continuous transactions in Japan. Failure to complete a required registration under the provisions of the *Companies Act* is punishable by a non-penal fine of not more than JPY 1 million (EUR 8 695) (*Companies Act*, Art.976(i)). Likewise, failure to state or record matters to be stated or recorded (or recording false matters) in the articles of incorporation and shareholder registry is punishable by a non-penal fine of not more than JPY 1 million (Art.976(vii)). Fines under Article 976 can be levied against *inter alia* the company's incorporator, directors, auditor, and administrator of shareholder registry (Art.976). Moreover, providing false information to the Legal Affairs Bureau which causes the Registrar to make a false entry in the registry is punishable by imprisonment with work for not more than five years or a fine of not more than JPY 500 000 (EUR 4 348) (*Penal Code* Art.157(1)).

160. The Legal Affairs Bureau reports that contents of the commercial registry are accurate and reliable because: the matters to be registered under the *Companies Act* (e.g. the changing of a director) cannot be asserted against a bona fide third party until after the registration of such matters (*Companies Act* Art.908); those who fail to register or register false information intentionally are punished; and registration applicants are obliged to submit documents necessary to investigate the contents of the application. The Registrar in each competent branch of the Legal Affairs Bureau has specialised legal knowledge and examines the contents of applications. In cases where the Legal



Affairs Bureau comes to know about a person who has failed to meet his/her registration obligations which subjects them to non-penal fines, the Registrar will notify such a fact to the Court of Justice. The Court of Justice is responsible for asserting and collecting fines imposed under the *Companies Act*. In addition, Japan's *State Redress Law* is applied to inappropriate conduct of a Registrar and the government compensates damages to those who rely on information registered in the commercial registry.

161. Stock companies are obliged to prepare and maintain a shareholder registry (*Companies Act* Art.121). Failure to maintain a shareholder registry is punishable by a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.976(viii)).

162. Failure to provide a required registration under the *Limited Liability Partnership Act* and *Limited Partnership Act for Investment* is an offence and subjects the partners of a LLP and general partners of a investment LPS to a civil fine of not more than JPY 1 million (EUR 8 695) (*Limited Liability Partnership Act* Art.75(i); *Limited Partnership Act for Investment* Art.34).

163. The partners of LLPs and investment LPSs are obliged to make and retain a written partnership contract that contains the names and addresses of the partners (*Limited Liability Partnership Act* Art. 4; *Limited Partnership Act for Investment* Art.3). Failure to maintain a partnership agreement is punishable by a civil fine of JPY 1 million (EUR 8 695).

164. Trust companies are obliged to prepare a report on the status of trust property for each accounting period (which cannot exceed one year) and deliver it to the beneficiaries of the trust property (Art.27(1)). Failure to deliver information regarding trust particulars to the beneficiaries, or delivering false information to the beneficiaries, is an offence and subjects the representatives of a trust company to imprisonment with work for not more than six months, a fine of not more than JPY 500 000 (EUR 4 348), or both (Art.96(vii) and (viii)).

165. General incorporated associations and general incorporated foundations are obliged to register information that identifies their founders and members of the foundation council. Failure to register, or registering false documents, with the Legal Affairs Bureau is an offence and subjects the foundation's directors and council to a non-penal fine of not more than JPY 1 million (Art.342). General incorporated associations and general incorporated foundations are also obliged to prepare and maintain accurate accounting books (*GIAGIF Act* Art. 120, 199). The accounting books, amongst other things, identify beneficiaries (if any) who have received payments from the foundation or association. Failure to maintain, or recording false entries in, accounting books is an offence and subjects the directors and foundation council to a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.342).



166. General incorporated associations are obliged to prepare and maintain a membership registry listing the names and addresses of its members (*GIAGIF Act* Art.31). Failure to maintain a membership registry, or making false statements in the registry, is an offence and subjects the general incorporated association's directors and foundation council to a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.342).

167. Specified business operators under Japan's *PTCPA* are obliged to identify and maintain records on the identities of their customers and the natural person who is actually in charge of conducting a specified transaction. Failure to conduct customer due diligence or maintain records as required by the *PTCPA* is an offence and the administrative authorities can order the specified business operators who commit the offence to take remedial actions (Art.16). If the specified business operators commit an offence to the order, they are subject to imprisonment with work for not more than two years or a fine of not more than JPY 3 million (EUR 26 086), or both (Art.23).

168. Japan's administrative authorities may, to the extent necessary for the enforcement of obligations under the *PTCPA*, including the implementation of the requirement for customer identification, collect reports from and conduct on-site inspections (Arts.13, 14). Attorneys are subject to supervision for compliance with these obligations by the JFBA, which can take disciplinary actions for non-compliance, such as reprimand, suspension of business for not more than two years, order for withdrawal from the association, or expulsion.

169. A variety of strict tax examinations are conducted in Japan for legal and individual taxpayers that attempt to evade their tax obligations. Case selection processes are supported by the KSK system, which contains data related to income tax returns, corporation tax returns, and a variety of information sources, from the viewpoint of business type, business form, and business size. The National Tax Agency reports that it has a structure to efficiently collect information which is effective for examinations.

170. Civil penalties for Japanese tax purposes are collectively referred to as "kasanzei". They generally apply when tax returns have not been submitted by required deadlines or not submitted correctly and have the nature of an administrative sanction. The following lists the types of penalties under Japan's tax laws:

Description	Tax Law	Penalty Amount
Additional tax for deficient returns (Kasyoushinkoku-kasanzei)	<i>General Act of National Taxes</i> , Article 65	10% or 15% of additional duties and taxes
Additional tax for no return or return after due date (Mushinkoku-kasanzei)	<i>General Act of National Taxes</i> , Article 66	15% or 20% of additional duties and taxes
Heavy additional tax (Juukasanzei)	<i>General Act of National Taxes</i> , Article 68	35% (deficient returns) or 40% (no return or return after due date) of total amount of duties and taxes in relations to hiding or disguising the fact based on which taxable income should be calculated
No return (or information return) or return after due date without due cause	<i>Income Tax Act</i> , Article 241; <i>Corporation Tax Act</i> , Article 160	Imprisonment for a term not exceeding 1 year, or a fine not exceeding JPY 500 000
Tax evasion	<i>Income Tax Act</i> , Article 238; <i>Corporation Tax Act</i> , Article 159	Imprisonment for a term not exceeding ten years, and/or a fine not exceeding JPY 10 million or not exceeding evaded tax amount
Tax evasion due to no submission of tax return	<i>Income Tax Act</i> , Article 238; <i>Corporation Tax Act</i> , Article 159	Imprisonment for a term not exceeding 5 years, and/ or a fine not exceeding JPY 5 million or not exceeding evaded tax amount*
Noncompliance of preparing and maintaining books and records	<i>Income Tax Act</i> , Article 150; <i>Corporation Tax Act</i> , Article 127	Revocation of blue return eligibility
Noncompliance in submitting information return	<i>Income Tax Act</i> , Article 242	Imprisonment for a term not exceeding 1 year, or a fine not exceeding JPY 500 000

\* Effective from 30 August 2011..

171. To impose correct taxes on taxpayers who intentionally evade taxes using fraud or other illegal acts, the tax authorities conduct tax examinations by exercising its compulsory authority, using methods similar to those used in criminal investigations conducted by other enforcement authorities. In a criminal investigation, tax collectors consider the following factors in determining whether the case is criminal (*i.e.* tax crime): degree of maliciousness; scale of the offence; degree of evidence to be gathered for the sake of building a criminal case; and other such factors. Tax collectors (criminal investigators) of the tax authorities are to report charges to Japan's public prosecutors to request criminal prosecution (public prosecutors then make final decision regarding the institution of prosecution after their own investigations).

172. In fiscal year 2009, the tax authorities commenced 213 criminal investigations, processed 210 cases, including those carried over from the previous fiscal year, of which it charged 149 cases that were forwarded to public prosecutors. In fiscal year 2009, 141 cases were all convicted at the Court of First Instance with an average prison sentence of 14.6 months and average fines amounting to about JPY 17 million (EUR 147 800). Seven persons were sentenced to prison without probation. Prison sentences without probation have been handed down every year since 1980.

173. There is a variety of penalties under Japan's laws to ensure that information required to be maintained is, in fact, maintained. The penalties appear to be proportionate and dissuasive enough to ensure compliance. Most of Japan's laws provide a range of penalties, including small to large monetary fines depending on the level of infraction and imprisonment in egregious cases. In addition, the tax authority is able to respond to requests for ownership and identity information for all types of legal entities and arrangements. Information received from partner jurisdictions with an exchange of information relationship with Japan confirms this.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

174. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

### **General requirements (ToR A.2.1)**

175. The *Corporation Tax Act* and *Income Tax Act* contain provisions requiring the maintenance of accounting records that correctly explain all transactions, enable the financial position of relevant entities and arrangements to be determined with reasonable accuracy at any time, and allow financial statements to be prepared. Other specific acts, as described below, add to or reinforce the record-keeping requirements contained in the *Corporation Tax Act* and *Income Tax Act*.

#### *Tax laws*

176. The *Corporation Tax Act* provides the obligations for companies, foundations<sup>24</sup>, associations<sup>25</sup>, and trusts taxable as corporations (e.g. trusts which are allowed to issue beneficiary rights in the form of securities) to prepare and retain accounting records for a period of seven years. Details of accounting records are specified in Articles 66 and 67 of the *Corporation Tax Law Enforcement Ordinance*. Article 66 provides that all companies “shall prepare cashbooks and other required accounting books which systematically and clearly record items pertaining to transactions and perform account settlements on the basis of those records”. Foreign companies are obliged to prepare such records for operations resulting in Japanese-source income as stipulated in Article 42 of the *Corporation Tax Act* (Computation of Income Amounts Pertaining to Domestic Source Income). Article 67 clarifies the

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- 24. Charitable foundations are not subject to the obligations unless they run profit-making business.
  - 25. Charitable associations are not subject to the obligations unless they run profit-making business.

types of documents required to be prepared and maintained under Articles 42 and 66, and these include:

- copies of contractual agreements, invoices, receipts, estimates, and other documents corresponding to these materials that are received from counterparties to a transaction; and
- financial statements such as inventory sheets, balance sheets, profit and loss statements and other documents prepared with regard to account settlements.

177. Article 67 of the *Corporation Tax Law Enforcement Ordinance* further provides that companies are obliged to consolidate their accounting records and preserve the records for seven years at the place for tax payments (*i.e.* in Japan). If a company wishes to keep accounting records electronically for tax purposes, it is obliged to apply for electronic record retention with its local Tax Office. In practice, Tax Offices will approve the request if the company demonstrates that it can keep documents electronically in compliance with Japan's tax laws (*Electronic Book Keeping Act* Art.4).

178. Article 231 of the *Income Tax Act* provides that a resident who performs operations that generate real estate income, business income, or timber income in the year (and a non-resident who performs such operations in Japan) shall, as specified by *Ordinance of the Ministry of Finance*, maintain accounting books and record therein the matters concerning the gross revenue and necessary expenses for transactions in the relevant year and preserve these books (including documents prepared or received concerning the operations). Articles 102 and 103 of the *Ordinance of the Ministry of Finance* provide that residents and non-residents are obliged to consolidate the following accounting books and documents and maintain such documents for seven or five years at the location of their address or business address:

- accounting books with respect to all transactions, stock sheets, inventory sheets, balance sheets, profit and loss statements and any other such documents prepared with regard to accounting (seven years); and
- underlying documentation including claims, delivery slips, receipts, and other documents (including contractual agreements) that are made or received with respect to the operation (five years).

### *Companies*

179. Article 432 of the *Companies Act* requires every stock company to prepare accurate books in a timely manner and to retain its account books and important materials regarding its business for ten years from the time of the closing of the account books. Article 435 of the *Companies Act* requires

every stock company to prepare financial statements (meaning balance sheets, profit and loss statements and other statements as is necessary and appropriate in order to reflect the status of the assets and profits and losses of a stock company) and business reports for each business year and supplementary schedules thereof. Stock companies are obliged to retain their financial statements and supplementary schedules thereof for ten years from the time of their preparation (Art.435(4)). Financial statements must be kept at the stock company's head office (Art.442). Stock companies are further obliged to give public notice of their balance sheets (or, for large companies<sup>26</sup>, their balance sheets and profit and loss statements) immediately after the conclusion of the annual shareholders meeting (Art.440).

180. Article 615 of the *Companies Act* requires every membership company (i.e. a general partnership company, limited partnership company, or limit liability company) to prepare accurate books in a timely manner and to retain its account books and important materials regarding its business for ten years from the time of the closing of the account books. Article 617 of the *Companies Act* requires every membership company to prepare financial statements (meaning balance sheets and other statements that are necessary and appropriate in order to indicate the status of the property of a membership company). Membership companies are obliged to retain their financial statements for ten years from the time of their preparation (Art.617(4)).

181. A liquidator must retain the books of the liquidating stock company or membership company as well as any material data regarding the business and liquidation of the same for a period of ten years from the time of the registration of completion of the liquidation at the location of head office of the liquidating company (*Companies Act* Arts.508, 672).

### *Partnerships*

182. The *Limited Liability Partnership Act* and *Limited Partnership Act for Investment* respectively provide accounting record retention rules for LLPs and investment LPSs. Individual or corporate partners are also subject to the record-keeping requirements under the *Income Tax Act* and *Corporation Tax Act*, respectively.

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26. A “large company” means any stock company which satisfies any of the following requirements: the amount of the stated capital in the balance sheet as of the end of its most recent business year is JPY 500 million (EUR 4.35 million) or more; or the total sum of the amounts in the liabilities section of the balance sheet as of the end of its most recent business year is JPY 20 billion (EUR 173.9 million) or more (*Companies Act* Art.2).

183. Article 28 of the *Limited Liability Partnership Act* provides that the accounting of an LLP “shall be governed by generally accepted corporate accounting practices”. Partners of a LLP are obliged to prepare a balance sheet of the partnership as of the date of formation of the partnership. Partners are also obliged, within two months from the end of each business year, to prepare a balance sheet, profit and loss statement and other detailed statements of the partnership (which must include the amount of each capital contribution made by each partner for the relevant business year) (Arts.29(1)-(2); 31(2)). Such documents may be prepared in electronic format and the partners are obliged to retain these documents at the LLP’s principal office in Japan for 10 years from the preparation thereof (Art.31(3), (4)). Liquidators of LLPs are obliged to preserve the financial books of the LLP in liquidation and material documents regarding the LLP’s business and liquidation for 10 years from the registration of the conclusion of liquidation in the district in which the principal office of the LLP in liquidation is located (Art.52). Failure to prepare and retain, or recording false matters in, financial statements is an offense and subjects the partners or liquidators of a LLP to a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.75).

184. Article 8 of the *Limited Partnership Act for Investment* provides that the general partners of a investment LPS are obliged to prepare, within three months after the end of each business year, a balance sheet, profit and loss statement and business report, along with detailed attachments (referred to as “financial statements”). Financial statements of a investment LPS must be maintained by the general partners at the principal office of the investment LPS for a period of 5 years (Art.8). General partners of investment LPSs are further obliged to maintain an audit report prepared by either a certified public accountant or an accounting firm for a period of five years (Art.8(2)). All partners of investment LPSs may inspect or request a copy of the financial statements and audit report at any time (Art.8(3)). Failure to prepare and retain, or recording false matters in, financial statements is an offense and subjects the general partners or liquidators of a investment LPS to a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.34).

185. There are no specific provisions in the *Civil Code* requiring the maintenance of accounting records for NKs. However, corporate and individual partners of a NK are obliged to prepare and maintain consolidated accounting records of the NK pursuant to the *Corporation Tax Act* and *Income Tax Act*, respectively. As a practical matter, NK members must include income arising from their NK interests in their corporate or individual tax returns compliant with Japan’s tax laws. NKs typically draw up their accounts for a period that coincides with the accounting period of the majority of their members to calculate taxable income. Standard NK contracts typically include a requirement for the NK to prepare financial records under Japanese generally accepted accounting principles.



### *Trusts*

186. The *Trust Act* requires all trustees, including trustees subject the *Trust Business Act*, to prepare a balance sheet, profit and loss statement, trust account ledger, and general ledger reflecting the financial status of trust assets and report such matters to the beneficiaries (Article 37). Interested persons can inspect and copy these documents and records (Art.38). Any trustee who fails to perform the obligation to prepare these documents, or has made false statements or records, is subject to a civil fine of not more than JPY 1 million (EUR 8 695) (Art.270). In addition, trustees are obliged, upon request from any beneficiary at any time, to report on the status of trust administration as well as the status of property that belongs to trust property (*Trust Act* Art.36).

187. Trust companies are also obliged to prepare a report on the status of trust property for each accounting period (which cannot exceed one year) and deliver it to the beneficiaries of the trust property (*Trust Business Act*, Art.27(1)). It is also provided under the *Ordinance for Enforcement of the Trust Business Act* that trust companies are obliged to prepare and maintain a trust account ledger for ten years from the maturity of the trust, and general ledger for five years since the inception of the trust.

188. Failure to deliver information regarding trust particulars to the beneficiaries, or delivering false information to the beneficiaries, is an offense and subjects the representatives of a trust company to imprisonment with work for not more than six months, a fine of not more than JPY 500 000 (EUR 4 348), or both (Art.96(vii) and (viii)).

189. In addition, section 227 of the *Income Tax Act* provides that a trustee of a trust (excluding collective investment trusts, defined retirement and pension trusts, and trusts taxable as corporations) is obliged to submit a Statement of Trust to the tax authorities within one month after the end of each business year in the case where the trustee is a trust company or by 31 January each year in the case where the trustee is not a trust company. The form of the Statement of Trust is specified in article 96(4) of the *Ministry of Finance Ordinance* and the particulars that must be filed with Japan's tax authorities include profit and loss accounts and balance sheet information regarding the financial status of the trust, and the amount of profit (if any) distributed to the beneficiary. Trustees of trusts taxable as corporations (e.g. trusts which are allowed to issues beneficiary rights in the form of securities) are subject to the record-keeping requirements under the *Corporation Tax Act*. Individual trustees are subject to the record-keeping requirements under the *Income Tax Act*.



### *Foundations*

190. General incorporated associations and general incorporated foundations are obliged to prepare and maintain accurate accounting books, balance sheets, profit and loss statements, business reports, and detailed annexed statements thereof (GIAGIF Act Arts.120-129, 199). The accounting books, amongst other things, identify beneficiaries (if any) who have received payments from the foundation or association. Accounting books must be retained for 10 years from the time they are closed (Arts.120, 199). Failure to maintain, or recording false entries in, accounting books is an offence and subjects the directors and foundation council to a non-penal fine of not more than JPY 1 million (EUR 8 695) (Art.342).

191. General incorporated associations and general incorporated foundations are also subject to the same record-keeping requirements as companies under the *Corporation Tax Act* if they run a profit-making business (GIAGIF Arts.120, 199).

### *Service providers*

192. Specified business operators under the *PTCPA* (as defined in paragraphs 94 – 102) are obliged, upon concluding a transaction, to prepare transaction records and to maintain those records for seven years from the day the transaction was conducted (*PTCPA* Art.7). Transaction records include: the date of the transaction; the type and value of the transaction; and matters sufficient for identifying the original possessor and destination for transactions which accompany the transfer of property (*PTCPA Ordinance* Art.14). However, transactions exempted from the *PTCPA* record-keeping requirement include: transactions without transfer of property; transactions with transfer of property which amount to less than JPY 10 000 (EUR 86); and with respect to money exchange businesses, the purchase or sale of foreign currency or traveller's checks of less than JPY 2 million (EUR 12 700).

### ***Underlying documentation (ToR A.2.2)***

193. For tax purposes, persons subject to Japan's *Corporation Tax Act* or *Income Tax Act* have a statutory obligation to maintain underlying documentation. Under the *Corporation Tax Act*, companies, foundations, associations, and trusts taxable as corporations are obliged to maintain copies of contractual agreements, invoices, receipts, estimates, and other documents corresponding to these materials that are received from counter-parties to a transaction (*Corporation Tax Law Enforcement Ordinance* Art.67). Foreign companies are also obliged to prepare and maintain such records for their operations that result in Japanese-source income. Under the *Income Tax Act*, individuals who perform operations that generate real estate income, business

income, or timber income are obliged to maintain underlying documentation that includes claims, delivery slips, receipts, and other documents (including contractual agreements) that are made or received with respect to the operation (*Ordinance of the Ministry of Finance Arts.102, 103*). Non-residents who perform such operations in Japan are also obliged to prepare and maintain such records (*Income Tax Act Art.231*).

194. Article 37(5) of the *Trust Act* provides that where a trustee has prepared or acquired a written contract relating to the disposition of property that belongs to the trust property or any other documents or electromagnetic records concerning the trust administration, the trustee is obliged to retain such documents or records for ten years from the date of the preparation or acquisition. Accordingly, trustees are obliged to maintain underlying documentation concerning the trust administration (such as contracts, invoices, etc.) irrespective of the type of income (if any) they generate. In practice, Japan's tax authorities report no issues regarding the availability of underlying documentation for trusts.

195. Charitable foundations and charitable associations are obliged to prepare and maintain accurate accounting books, balance sheets, profit and loss statements, business reports, and detailed annexed statements thereof (*GIAGIF Act Arts.120-129, 199*). They are also obliged to maintain important materials pertaining to its business (Art.120). Japan's tax authorities report that "important materials pertaining to its business" include underlying documentation such as invoices and contracts. Additionally, Japan's tax authorities report that charitable foundations and charitable associations are obliged to submit, upon request, information concerning the circumstances of their operational organisation and business activity, which may include such items as contracts and invoices.

196. Several of Japan's exchange of information partners who provided input regarding the review of Japan noted that Japan has been able to provide underlying documentation, including receipts, invoices, transaction records, and contractual agreements, in response to specific requests for exchange of information.

### ***Document retention (ToR A.2.3)***

197. The record-keeping requirements contained in *Corporation Tax Act* are subject to a general retention period of seven years, in principle, two months after the end of the income year to which they relate (*Corporation Tax Law Enforcement Ordinance Art.67*). The record-keeping requirements contained in the *Income Tax Act* are subject to a general retention period of seven (or five) years after the end of the income year to which they relate (*Ordinance of the Ministry of Finance Arts.102, 103*).

198. Articles 432 and 615 of the *Companies Act* obliges stock companies and membership companies, respectively, to maintain accounting records for ten years from the time of their closing. A liquidator appointed in relation to a company is required to retain the accounts and records of the liquidated company for a minimum of ten years from the time of the registration of completion of the liquidation (Art.s.508, 672).

199. Partners of LLPs are obliged to maintain accounting records of the LLP for ten years from the time of their preparation (*Limited Liability Partnership Act* Art.31(4)). General partners of investment LPSs are obliged to maintain accounting records of the LPS for five years from the time of their preparation (*Limited Partnership Act for Investment* Art.8).

200. Trustees subject to Japan's *Trust Business Act* are obliged to maintain a trust account ledger for ten years from the maturity of the trust and a general ledger for five years from the inception of the trust (*Ordinance of Enforcement of the Trust Business Act*).

201. General incorporated associations and general incorporated foundations are obliged to maintain accounting records for 10 years from the time they are closed (*GIAGIF Act* Arts.123, 199).

202. Specified business operators under the *PTCPA* are obliged to maintain transaction records for seven years from the day the transaction was conducted (*PTCPA* Art.7).

203. Information received from Japan's peers notes that in all cases Japan has been able to provide the requested accounting records.

#### Determination and factors underlying recommendations

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

### A.3. Banking information

Banking information should be available for all account-holders.

204. In Japan, the Financial Services Agency serves as the regulatory authority for financial institutions. Banks are companies that have been established in accordance with the *Companies Act* and have obtained a licence to

conduct banking business in accordance with the *Banking Act*. The *Banking Act* empowers the Commissioner of the Financial Services Agency to demand reports and materials concerning the business or financial conditions of a bank (including its agencies), to conduct on-site inspections at bank premises, to penalise misconduct (suspension of a bank’s operations or revocation of its license) and to order a bank to hold a part of its assets within Japan.

205. The application process for a banking license in Japan is set out in Article 1(8) of the *Ordinance for Enforcement of the Banking Act*. The licence application has to be signed by all directors, and documents required to be submitted include the applicant’s articles of incorporation, certificate of registered matters, minutes of the initial meeting, detailed business plan, resumes of all directors, company auditors and accounting advisors and locations of each business office.

### ***Record-keeping requirements (ToR A.3.1)***

206. Article 7 of the *PTCPA* requires financial institutions, upon concluding a transaction (international or domestic), to immediately prepare transaction records and to maintain those records for seven years from the day the transaction was conducted (Art.7). Article 14 of the *Ordinance* mandates that transaction records consist of:

- the account number and other matters to be used for the purpose of searching customer identification records;
- the date of the transaction;
- the type and value of the transaction; and
- matters sufficient for identifying the original possessor and destination for transactions which accompany the transfer of property.

207. There are exceptions in the record-keeping requirements under the *PTCPA* for “small transactions”. Transactions exempted from the *PTCPA* record-keeping requirements include (*Order* Art.13):

- transactions without transfer of property;
- transactions with transfer of property which amount to less than JPY 10 000 (EUR 86); and
- with respect to money exchange businesses, the purchase or sale of foreign currency or traveller’s checks of less than JPY 2 million (EUR 12 700).

208. In terms of customer due diligence, upon conducting customer identification, specified business operators are obligated to prepare records and

maintain these for seven years from the day on which the business relationship was terminated (*PTCPA* Art.6). The following records are required to be maintained (*Ordinance* Art.10(1)):

- name and other matters sufficient for identifying the person for whom identification was conducted;
- name of the person who conducted the customer identification and name of the person who prepared the customer identification records;
- the date and time the customer identification document was presented in cases where the customer identification was conducted face-to-face;
- the type of transaction for which customer identification was conducted;
- the method by which customer identification was conducted;
- the title of the customer identification documents, or copies thereof, the mark or number attached thereto, sufficient for identifying the document or copy thereof; and
- the account number for searching transaction records.

209. Banks and other financial institutions are also subject to record-keeping requirements under the *Corporation Tax Act*, which stipulates the obligations for companies to prepare and retain transaction records for a period of seven years. Banks and other financial institutions are obliged to maintain records that systematically and clearly record all transactions (including “small transactions” as defined for purposes of Japan’s AML record-keeping regime) and to perform account settlements based on those records (*Corporation Tax Law Enforcement Ordinance* Arts.66, 67). Article 67 of the *Corporation Tax Law Enforcement Ordinance* requires the maintenance of copies of contractual agreements and other documents corresponding to these materials that are received from counter-parties to a transaction. Article 67 further provides that companies are obliged to preserve these records for seven years.

210. There are sufficient legal obligations in place for banks and other financial institutions to maintain all records pertaining to accounts as well as to related financial and transactional information in Japan. Furthermore, input received from Japan’s peers indicates that Japan is able to exchange bank records for all types of legal entities and arrangements. Japan reports that bank information is maintained for all clients and that its competent authority has not encountered issues regarding availability of bank information, both for domestic tax cases and for providing exchange of information assistance.

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

## B. Access to information

211. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Japan's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

### Overview

212. Japan's tax authorities have the necessary powers to obtain bank, ownership, identity, and accounting information and have enforcement measures to compel the production of such information. The ability of Japan's tax authorities to obtain information for exchange of information purposes is derived from its general access powers under the *Tax Treaties Special Provisions Act* coupled with the authority provided by the relevant exchange of information agreements. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information.

213. Japan's competent authority (in practice, the National Tax Agency's Director of the International Operations Division), when requested by a foreign counterpart, can retrieve information with the assistance of officials within Regional Taxation Bureaus and Tax Offices, which have the necessary powers under the *Tax Treaties Special Provisions Act* to access information from taxpayers and third parties. Officials within the National Tax Agency have access to the National Tax Agency's KSK system, which contains relevant tax return and information return information, as well as relevant information provided by the Legal Affairs Bureau. As a result, approximately 20% of Japan's exchange of information requests in the past three years ending 31 December 2009 have been responded to without the need for involvement

of the Regional Taxation Bureaus or Tax Offices. The co-ordination procedures between Japan's competent authority and the Regional Taxation Bureaus and Tax Offices are clearly defined and effective in practice.

214. Application of rights and safeguards (e.g. notification, appeal rights) in Japan do not unduly prevent or delay effective exchange of information.

## **B.1. Competent Authority's ability to obtain and provide information**

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

### ***Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)***

215. The National Tax Agency is the Japanese government agency responsible for administering Japan's tax laws and the assessment and collection of internal taxes. The National Tax Agency supervises 12 Regional Taxation Bureaus and 524 Tax Offices throughout Japan. The National Tax Agency Head Office sets the strategy for the tax administration, and supervises and oversees the administration of the Regional Taxation Bureaus and the Tax Offices. Each of the Regional Taxation Bureaus, which are supervised and overseen by the National Tax Agency, supervises and oversees Tax Offices in its jurisdiction. In addition, the Bureaus directly levy and collect taxes from large taxpayers. The Tax Offices, under the guidance and oversight of the National Tax Agency and Regional Taxation Bureaus, serve as the frontline enforcement organisations, and the administrative bodies maintaining the closest relationships with taxpayers in Japan. In fiscal year 2010, the National Tax Agency had 56 261 employees and a budget of JPY 716 billion (EUR 6.226 billion) (the majority of which was accounted for by salary costs).

216. Administration of the exchange of information articles under Japan's treaty network is the responsibility of Japan's competent authority, being the Minister of Finance or an authorised representative of the Minister. The Director of the International Operations Division under the National Tax Agency is authorised to act as the competent authority for international exchange of information in tax matters and, in practice, is responsible for managing and responding to all of Japan's exchange of information requests. The International Operations Division is based in Tokyo.

217. The National Tax Agency has internal administrative guidelines, the "Commissioner's Directive for Exchange of Information with Contracting



Party of Tax Treaty”, for processing incoming requests for information, including procedures relating to the exchange of information staff receiving requests and for Regional Taxation Bureaus (including Tax Offices). These procedures are based on the *OECD Manual on Information Exchange*. Upon receipt of a request, the competent authority performs a control check to determine whether the request is in conformity with the respective exchange of information agreement and whether there exist “grounds for non-exercise of authority of inquiry and inspection” (as described in B.2. of this report).

218. In approximately 20% of cases, requests for exchange of information made under Japan’s DTCs or TIEAs pertain to information already held by the National Tax Agency within its KSK system. The National Tax Agency’s internal administrative guidelines provide the procedures used in cases where information is available from internal sources. In such cases, Japan’s competent authority is generally able to respond to the request without the involvement of Regional Taxation Bureaus. The guidelines also stipulate the procedures for exercising the authority of inquiries and inspections under Japan’s *Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties (Tax Treaties Special Provisions Act)* in order to collect information from third parties in cases where requested information is not available from internal sources.

219. If requested information is in the possession or control of a taxpayer or third party, the request is forwarded from the competent authority to the competent Regional Taxation Bureau where the taxpayer or third party resides. At each Regional Taxation Bureau there is an exchange of information administrator who is responsible for receiving such requests. The request is sent electronically and logged via a management record. Upon receipt of a request, the exchange of information administrator appoints a collecting information official at a Tax Office with the closest proximity to where the taxpayer or third party possessing or controlling the information resides. Generally, Senior Examiners in International Taxation (officials who have thorough knowledge of international tax matters) are appointed to collect information. The official collecting the information is thereafter responsible for retrieving the information using Japan’s statutorily prescribed information gathering powers.

220. In most cases, these officials arrange a face-to-face meeting with the person or representative who is the source of the requested information (including representatives from banks). In practice, the exercise of powers of inquiry and inspection pursuant to an international exchange of information request is typically notified to the source of information; provided, however, the requesting jurisdiction did not request such information be kept confidential. At the pre-arranged meeting, the collecting information official explains

what information is required and informs the individual concerned of the consequences for failing to provide such information. The tax official sets an appropriate date for responding that is determined based on the volume and particulars requested on a case-by-case basis. Once retrieved, the information is sent via internal mail service back to the exchange of information administrator and then back to Japan's competent authority. Both the exchange of information administrator and the competent authority review the information to ensure it adequately responds to the request.

221. There are no legal or procedural limitations on how a person may be audited or the number of times they may be audited that would limit the ability of the Japan's competent authority or Regional Taxation Bureaus (including Tax Offices) to use their access powers for the purpose of exchange of information requests.

### *Powers to obtain information*

222. Japan's tax authorities have the necessary information gathering powers conferred on it under the *Tax Treaties Special Provisions Act*. The *Tax Treaties Special Provisions Act* provides the statutory authority for Japan's competent authority to exchange information for tax purposes with foreign jurisdictions pursuant to the provisions of a DTC or TIEA (Art.8-2).

223. Article 9 of the *Tax Treaties Special Provisions Act* provides that the relevant official of the National Tax Agency, Regional Taxation Bureaus, or Tax Offices may, pursuant to a request for information made under a DTC or TIEA concerning civil tax matters in the requesting jurisdiction, conduct inquiries regarding parties specified in the request and inspect the accounting books and other property concerning the businesses of such parties.

224. Article 10-2 of the *Tax Treaties Special Provisions Act* provides that the Tax Collectors (criminal investigators) may, pursuant to a request for information made under a DTC or TIEA concerning criminal tax matters in the requesting jurisdiction, conduct inquiries regarding parties specified in the request and inspect the accounting books and other property concerning the businesses of such parties. Article 10-3 of the *Tax Treaties Special Provisions Act* also provides tax collectors with the authority to conduct search and seizure to obtain necessary information in response to a tax crime investigation in the requesting jurisdiction. Prior to exercising this authority, Tax Collectors (located in the Regional Taxation Bureaus) must obtain a permit issued by a Justice of the District Court holding jurisdiction over the location of the relevant Regional Taxation Bureau. In practice, permits for conducting search and seizure are obtained by tax collectors on the same day of making an appearance before a Justice of the District Court.

### Bank information

225. There are no limitations on the ability of Japan's tax authorities to obtain information held by a bank or other financial institution for either civil or criminal tax purposes in response to a specific exchange of information request. There are no special procedures used to access information held by banks or other financial institutions. There is no need for court approval when officials from the tax authorities request information from banks or other third party financial institutions. Consent of other authorities or regulatory bodies is also not required.<sup>27</sup>

226. There is no explicit requirement to specify particular details when making a request for information to Japan for bank information. As a matter of practicality, however, sufficient details would need to be provided to enable Japan's tax authorities to action the request. The National Tax Agency reports that it is possible to action a request for bank information if the requesting jurisdiction provides a combination of information to specify the identity of the account holder (*e.g.* account number or similar identifying information).

227. The tax authorities have a good relationship with financial institutions in Japan and reports that banks are co-operative with regard to requests for information. There have been no cases where banks have refused to provide information to the tax authorities for exchange of information purposes.

### Ownership and identity information and accounting records

228. There are no limitations on the ability of the tax authorities to obtain ownership and identity information and accounting records from taxpayers or third parties for civil or criminal tax purposes. There is no need for court approval when officials from the tax authorities request information from taxpayers or third parties. Court approval is required, however, to exercise search and seizure for requests regarding criminal tax matters in the requesting jurisdiction. Search and seizure is not available for requests pertaining civil tax matters in the requesting jurisdiction.

229. The TIEAs concluded by Japan include provisions that tax officials of a requesting jurisdiction can be present during examinations of taxpayers and third parties upon a requested jurisdiction's consent. To date, no jurisdiction has requested to participate in an examination in Japan.

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27. As mentioned in paragraph 224, Japan's tax authorities must obtain permission from the courts to exercise their search and seizure powers for a requesting jurisdiction in relation to criminal cases.

### ***Use of information gathering measures absent domestic tax interest (ToR B.1.3)***

230. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. Japan has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to Japan’s tax authorities under the *Tax Treaties Special Provisions Act* can be used to provide exchange of information assistance regardless of whether Japan needs the information for its own domestic tax purposes.

### ***Compulsory powers (ToR B.1.4)***

231. As previously described, Japan’s tax authorities have the necessary powers to obtain information from natural and legal persons and have enforcement measures to compel the production of such information. Under the *Tax Treaties Special Provisions Act*, they have powers to discover and inspect any documents deemed relevant to their examination from taxpayers and third party record keepers for purposes of responding to an exchange of information request (Arts.9, 10-2, 13). The tax authorities do not have the power to compel testimony from taxpayers and third parties. In practice, this limitation has not limited Japan’s competent authority to respond to an information request. Input received from Japan’s peers confirms this.

232. Article 13 of the *Tax Treaties Special Provisions Act* provides that any person who: fails to respond to or provides false information in response to inquiries by relevant officials; hinders or evades inspections; or submits accounting books or other documents containing false entries or records shall be punished with imprisonment with work for a term not exceeding six months or fines not exceeding JPY 500 000 (EUR 4 348). In cases where representatives of corporations or the agents of corporations or individuals commits an offense under the *Tax Treaties Special Provisions Act*, in addition to penalising the actual perpetrator, fines are assessed against the said corporations or individuals (Art.13(2)).

### ***Secrecy provisions (ToR B.1.5)***

233. The *Protection of Personal Information Act* prohibits business operators, including banks and other financial institutions, from providing personal data to third parties without prior consent of the customer. Article 23 of the Act contains exemptions for cases in which the provision of personal data is “based on laws and regulations,” or “necessary for co-operation with a state organ, a local government or an individual or business operator entrusted by one in executing the affairs prescribed by laws and regulations” (Art.23(i-iv)). The third-party restrictions of the Act therefore do not apply

to Japan's competent authority when accessing information maintained by business operators, including banks and other financial institutions.

234. There are no other provisions under Japan's laws relating to the secrecy of ownership, identity or accounting information. Japan has no bank secrecy laws which prevent banks and other financial institutions from disclosing their client information to the tax authorities.

235. All of Japan's exchange of information agreements permit Japan to decline a request if responding to the request would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy. This follows the standards set forth in Article 26 of the OECD *Model Tax Convention* and the OECD *Model TIEA*.

236. Among the situations in which Japan is not obliged to supply information in response to a request is when the requested information would disclose confidential information protected by attorney-client privilege. Article 23 of the *Practising Attorney Act* provides that "a practicing attorney (bengoshi) or a person who was previously a practicing attorney shall have the right and duty to maintain the secrecy of any facts which he or she came to know in the performance of his or her duties; provided, however, that this shall not apply when otherwise provided for by any law".

237. Article 1 of the *Practising Attorney Act* provides that attorneys in Japan are entrusted with the mission of protecting fundamental human rights and achieving social justice. Article 3 further provides that the duties of an attorney in Japan, upon request of the party or the concerned parties, or upon the entrustment if public agency, are to engage in acts relating to lawsuits, non-contentious cases, objections, requests for re-examination, appeals, and other petitions against administrative agencies and other general legal services. Practising attorneys are required to register with at least one regional bar association in Japan, which is an autonomous professional organisation affiliated with the Japan Federation of Bar Associations.

238. The communications between a client and an attorney in Japan are only privileged to the extent that the attorney acts in his or her professional capacity as attorney in the performance of his or her statutorily prescribed duties. The privilege appears to be somewhat broader than that envisaged under the standard. However, it has never been invoked to prevent exchange of information in practice nor have any of Japan's peers had any difficulty obtaining information on this account. Moreover, where an attorney acts in any other capacity (e.g. as a real estate broker), the attorney client privilege does not apply. The privilege does not attach to documents or records delivered to an attorney in an attempt to protect such documents or records from disclosures required by law. In this case, exchange of information resulting

from and relating to any such communications cannot be declined because of the attorney-client privilege. Accordingly, attorney client privilege protection is preserved under Japan's DTCs and TIEAs and requests for that information will be declined unless the privilege has been waived.

239. In a 2001 Osaka High Court Decision and a subsequent 2002 Supreme Court decision<sup>28</sup>, it was held that Japan's tax laws and the *Practicing Attorney Act* are interpreted to mean that the information protected by an attorney's obligation of confidentiality can be disclosed to tax officials who exercise the power of inquiry and inspection. In the decisions, the courts took account of the strict confidentiality imposed on tax officials in Japan (see para.305) and that providing information to Japan's tax authorities would not directly lead to a public disclosure of the information.

240. Japanese law also recognises a protection against disclosure for judicial scriveners. Article 24 of the *Judicial Scrivener Act* provides that "unless there is a justifiable reason, a judicial scrivener or a person who was previously a judicial scrivener shall bear the duty to maintain the confidentiality of any facts which he or she may have learned in the course of performing his or her professional duties in relation to legal cases". Japan's tax authorities report that the privilege has never been invoked to prevent exchange of information in practice nor have any of Japan's peers had any difficulty obtaining information on this account. Moreover, where a judicial scrivener acts in any other capacity (e.g. as a real estate broker), the privilege does not apply.

241. The power to obtain information under Japan's tax laws is also restricted in the case of information held by CPAs, CPTAs and notaries. Article 27 of the *Certified Public Accountants Act* provides that "a certified public accountant shall not, without justifiable grounds, divulge to others or misappropriate any secrets that he or she has learned concerning the matters handled in his or her services." Similarly, Article 38 of the *Certified Public Tax Accountants Act* provides that "a certified public tax accountant shall not, without justifiable grounds, divulge to others or misappropriate any secrets learned concerning the matters handled in his or her services." Article 4 of the *Notary Public Act* provides "a notary public shall not divulge to others any secrets that he or she has learned concerning the matters handled in his/her services unless otherwise provided by other laws. This shall not apply when a notary public is permitted to do so by the clients." In practice, professional secrecy of CPAs, CPTAs and notaries has never been an obstacle for Japan's tax authorities to respond to an exchange of information request. The information maintained by these professionals is typically available through other channels in Japan (i.e. by the clients of these professionals).

28. Osaka High Court Decision, 19 December 2001, No.13; Supreme Court Decision, 25 June 2002, No.65.

242. In a 1997 Supreme Court decision,<sup>29</sup> it was held that a judicial scrivener did not violate his professional secrecy obligations under the *Judicial Scrivener Act* by disclosing information regarding a transaction of his client to Japan's tax authorities. In its decision, the Court took account of the strict confidentiality imposed on tax officials in Japan (see para.305) and that providing information to Japan's tax authorities would not directly lead to a public disclosure of the information. Japan's tax authorities report that this precedent should be applicable to other professionals, such as CPAs, CPTAs, and notary publics.

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

243. Japan's tax authorities are not statutorily obliged to inform the person concerned of the existence of an exchange of information request. Likewise, the tax authorities are not obliged to inform the taxpayer concerned prior to contacting third parties to obtain information.

244. In practice, however, Japan's tax authorities will disclose the fact that they are exercising their authority of inquiry and inspection under the *Tax Treaties Special Provisions Act* to the person in possession of the requested information. In particular, the following matters are explained to the source of information, except where the requesting jurisdiction indicates that such matters should not be disclosed (administrative guidelines):

- that authority of inquiry and inspection is being exercised to provide information to the Contracting Party under a DTC or TIEA;
- the Contracting Party that made the request;

29. Supreme Court Decision, 17 October 1997, No.1249.



- that the source of information was specified in the request;
- the information requested by the Contracting Party; and
- that the request is not subject to grounds for non-providing information (see para.246).

245. As part of Japan’s fiscal year 2011 tax reform (submitted to the Diet), new provisions under the *Act on General Rules for National Taxes* requiring prior written notification are under discussion in the Diet. The notification requirements provide that taxpayers should be informed of a tax examination conducted in Japan by written notice prior to the examination. The notification rules permit exceptions from prior notification in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting and/or requested jurisdictions. These provisions are proposed to apply *mutatis mutandis* to examinations for exchange of information purposes for foreign jurisdictions (*Tax Treaties Special Provisions Act* Art.9).

246. Article 8-2 of the *Tax Treaties Special Provisions Act* provides several safeguards to ensure the proper exercise of the tax authority’s power to conduct inquiries and inspections of taxpayers or third parties for purposes of responding to an exchange of information request. These are called “grounds for non-providing information” and include:

- the tax authorities of the Contracting Party are deemed unable to provide Japan with information corresponding to the information that would be provided by Japan (mutuality);
- it is deemed that the confidentiality of the information that would be provided by Japan pursuant to the *Tax Treaties Special Provisions Act* could not be guaranteed in the Contracting Party concerned;
- there is deemed to be a risk that the information that would be provided by Japan pursuant to the *Tax Treaties Special Provisions Act* might be used for other purpose except for contributing to the performance of the duties of the tax authorities of Contracting Party;
- there is deemed to be a risk that providing such information might harm Japan’s national interests;<sup>30</sup> and

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30. The National Tax Agency’s administrative guidelines provide that “risk of harming Japan’s interests” include, for example, cases that might affect Japan’s diplomatic and security interests, and cases that might impede public law and order and criminal investigations.



- the tax authorities of Contracting Party are deemed not to pursue regular means available in acquiring information requested (except where use of such means would be extremely difficult).

247. If any of the above grounds for non-providing information are judged to exist, Japan's competent authority will notify the requesting jurisdiction to this effect, with explanation of the reasons thereof.<sup>31</sup>

248. Taxpayers have no special rights to intervene against the tax authorities' information-gathering powers under the *Tax Treaties Special Provisions Act*.

249. The Japanese authorities have indicated that, to date, there have been no cases where taxpayers or third party record keepers refused to provide requested information in response to the tax authorities' information-gathering powers under the *Tax Treaties Special Provisions Act*.

#### Determination and factors underlying recommendations

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

31. The National Tax Agency's administrative guidelines includes information requested which would disclose or reveal any trade, business, industrial, commercial, or professional secret or trade process and offend against public order as a grounds for non-providing information.



## C. Exchanging information

### Overview

250. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses Japan's network of exchange of information agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

251. Japan has an extensive network of bilateral agreements that provide for exchange of information in tax matters, and is currently engaged in negotiations to establish new agreements as well as renegotiations of its older treaties. Japan has 65 exchange of information partners covered by 54 agreements (50 double tax conventions (DTCs) and 4 tax information exchange agreements (TIEAs)), 47 of which are in force. Japan actively seeks to expand its exchange of information network. In 2010, Japan signed protocols to its DTCs with Belgium, Luxembourg, Malaysia, Singapore, and Switzerland<sup>32</sup>. These protocols amend the DTCs' exchange of information articles to meet the international standard. Also in 2010, Japan signed agreements with Bermuda (TIEA); Hong Kong, China; Kuwait; Netherlands; and Saudi Arabia. In the first half of 2011, Japan signed TIEAs with The Bahamas, the Cayman Islands, and the Isle of Man. Japan's agreements cover its major trading partners and Japan has not refused to enter into an exchange of information agreement with any Global Forum member seeking to do so. The large majority of Japan's agreements meet the international standards.

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32. The protocol to Japan's DTC with Switzerland includes provisions that are not fully in line with the standard on identity of the holder of the information. Therefore, in order to be consistent with the standard it would be necessary for the protocol to rely on further mutual understanding of both States on the interpretation of these provisions.

252. Japan’s policy is to negotiate exchange of information agreements to the international standard. In particular, Japan’s practice is to include an exchange of information article in conformity with the 2005 update of the *OECD Model Taxation Convention*. Considering Japan’s extensive treaty network, many of them do not include the last update to *OECD Model Taxation Convention*. However, Japan’s capacity to access a wide range of information (as detailed in section B.1. of this report), in particular bank information, without reference to a domestic tax interest ensures Japan’s ability to exchange information in line with the international standard.

253. Input received from Japan’s peers indicates that in many cases Japan is not able to respond to requests for information within 90 days of receipt by providing the information requested or an update on the status of the request. Japan’s domestic procedures for handling exchange of information requests, in particular the lack of internal timelines for responding to requests, appear to inhibit expedient response times. In practice, Japan’s competent authority does not systematically provide requesting jurisdictions with a status update when requests cannot be responded to within 90 days. It is recommended that Japan ensure that its authorities set appropriate internal deadlines to be able to respond to exchange of information requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.

254. Japan’s institutional framework facilitates effective exchange of information: there is a sufficient number of professional staff with clear responsibilities for processing requests and retrieving information; the staff have adequate expertise and training specific to exchange of information; and Japan has adequate financial and technical resources dedicated to exchange of information.

255. In general, input from Japan’s exchange of information partners suggests that Japan’s practices in terms of exchange of information are to a high standard notwithstanding slow response times. Japan has been able to respond to the vast majority of requests it receives in a thorough and comprehensive manner.

### C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

#### *Other forms of exchange of information*

256. Beyond meeting the standard of effective exchange of information assistance in response to specific requests, Japan engages in exchange of information practices that go beyond the standard, including automatic and

spontaneous exchanges of information. Input received from Japan's peers indicates that Japan actively exchanges information on a spontaneous and automatic basis.

257. Japan provides information acquired during the course of examinations for domestic tax purposes to its exchange of information partners when it believes such information to be of interest to its partners. In addition, Japan systematically and periodically sends information it obtains on a routine basis to exchange of information partners. For example, Japan provides its exchange of information partners with information concerning non-Japanese residents obtained through mandatory tax reporting (e.g. information contained in information and withholding returns). Such information may include particulars concerning real-estate income, business income, dividends, interest, royalties, capital gains, and salary income. Several of Japan's exchange of information partners provided positive feedback regarding Japan's spontaneous and automatic exchange of information practices. Japan's competent authority reports that some of its specific requests for exchange of information relate to information provided on a spontaneous or automatic bases.

### ***Joint International Tax Shelter Information Centre***

258. Japan actively participates in the Joint International Tax Shelter Information Centre (JITSIC). JITSIC was established in 2004 by the tax administrations of Australia, Canada, the United Kingdom and the United States. In 2007, Japan's National Tax Agency joined JITSIC. In 2010, the tax agencies of the Republic of Korea and the People's Republic of China joined as members.

259. JITSIC was established to supplement the ongoing work of its members in identifying and curbing tax avoidance and shelters and those who promote them and invest in them.<sup>33</sup> Delegates from each of the member jurisdictions are based in either Washington, DC or London and exchange information on abusive tax schemes, their promoters and investors, consistent with the provisions of bilateral tax conventions.<sup>34</sup> Pursuant to the domestic procedures of the parties, the delegates of JITSIC from each respective member jurisdiction are delegated the ability to act as competent authorities for purposes of bilateral exchanges of information.

260. Japan has two delegates dispatched to the JITSIC London office. Among JITSIC member jurisdictions, information concerning tax avoidance schemes is exchanged on a daily basis through the JITSIC delegates.

33. JITSIC Memorandum of Understanding.

34. JITSIC Terms of Reference.

### ***Foreseeably relevant standard (ToR C.1.1)***

261. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1) of the OECD *Model Taxation Convention* set out below:

*The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.*

262. Japan’s DTCs are generally patterned on the OECD *Model Taxation Convention* and its commentary as regards the scope of information that can be exchanged. DTCs initially signed or amended by protocol after 2005 generally use the “foreseeably relevant” standard (Australia (2008); Belgium (2010); Brunei (2009); France (2007); Hong Kong (2010); Kazakhstan (2008); Kuwait (2010); Luxembourg (2010); Malaysia (2010); Netherlands (2010); Saudi Arabia (2010); Singapore (2010); Switzerland (2010); United Kingdom (2006)). Older DTCs generally use the term “as is necessary” or “as is relevant” in lieu of “as is foreseeably relevant”. The terms “as is necessary” and “as is relevant” are recognised in the commentary to Article 26 of the OECD *Model Taxation Convention* to allow for the same scope of exchange as does the term “foreseeably relevant”.<sup>35</sup>

263. Japan’s DTCs with Austria (1961), Fiji (1962), Ireland (1974), New Zealand (1967), Sri Lanka (1967) and Thailand (1990) incorporate additional language, generally noting that they apply to “such information (being information which is at their disposal (or available) under their respective taxation laws in the normal course of administration) as is necessary...”. In practice, this wording will not limit Japan’s ability to respond to a request from these jurisdictions. There is no domestic tax interest requirement in Japan and Japan’s authorities can access all types of information, whether this information is needed for domestic or exchange of information purposes. Japan is

35. The word “necessary” in Article 26(1) of the 2003 OECD *Model Taxation Convention* was replaced by the phrase “foreseeably relevant” in the 2005 version. The commentary to Article 26 recognises that the term “necessary” allows for the same scope of exchange as does the term “foreseeably relevant”.

able to exchange information, including in cases where the information is not publicly available or where it is not already in possession of the government authorities. It is noted, however, that while this is not an issue for Japan it may impose a restriction on the partner’s ability to respond to a request as they may interpret this language more restrictively.

264. Two of Japan’s DTCs – with Germany and Zambia – provide for the exchange of information that is “necessary” for the carrying out of the provisions of the agreement, but do not specifically provide for the exchange of information in aid of the administration and enforcement of domestic laws. It is recommended that Japan renegotiate these agreements so that they provide for effective exchange of information.

265. The Protocol to Japan’s DTC with Switzerland (2010) contains interpretive provisions which cover *inter alia* the interpretation of the exchange of information provision. In particular, the interpretive provisions provide that “where information is requested by a Contracting State in accordance with Article 25A, the competent authority of that Contracting State shall provide the following information to the competent authority of the other Contracting State: the name and, to the extent known, the address of any person believed to be in possession of the requested information”. This requirement is not fully in line with the international standard (see Article 5(5) of the OECD *Model TIEA* and its Commentary). In order to be consistent with the standard it would be necessary for the protocol to rely on further mutual understanding of both States on the interpretation of these provisions. Switzerland has announced that it is taking steps to bring the agreement into line with the standard.

266. Japan’s TIEAs with The Bahamas, the Cayman Islands, and the Isle of Man meet the foreseeably relevant standard as they are patterned on the OECD *Model TIEA* and its commentary regarding the scope of information that can be exchanged. Japan’s TIEA with Bermuda requires in Article 5 that the Applicant State is to provide further information to clarify the connection between the person under examination and the information requested, as follows:

*Where the applicant party requests information with respect to a matter which does not constitute serious tax evasion, a senior official of its competent authority shall certify that the request is relevant to, and necessary for, the determination of the tax liability under the laws of the applicant Party.*

267. Nevertheless, this variation to Article 5 of the OECD *Model TIEA* appears to be in line with the purpose of the requirement in this provision, which is to demonstrate the foreseeably relevance of the information sought. It is also noted that the Japan – Bermuda TIEA provides that a requested

party is under no obligation to provide information which relates to a period more than 6 years prior to the tax period under consideration.

268. In cases where a request is unclear or incomplete, Japan's competent authority reports that it routinely seeks clarifying or additional information from the requesting jurisdiction before declining a request. Information received from partner jurisdictions with an exchange of information relationship with Japan confirms this.

269. Records held by Japan's competent authority indicate that a few requests for information were declined during the last three years. The requests were declined by Japan because not all domestic available means of investigation had been exhausted by the requesting party. Generally, the requesting jurisdiction agreed with the determination and used alternative domestic avenues to source the information it was seeking.

### *In respect of all persons (ToR C.1.2)*

270. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

271. Twenty-nine of Japan's agreements specifically provide for exchange of information with respect to all persons. None of these agreements restricts the applicability of the exchange of information provision to certain persons, for example those considered resident in one of the States.

272. Twenty-five of Japan's DTCs limit the application of the treaty to residents of the contracting States (Austria; Brazil; Bulgaria; Canada; Czechoslovakia<sup>36</sup>; Denmark; Egypt; Fiji; Finland; Germany; Hungary; India; Indonesia; Ireland; Italy; New Zealand; Poland; Philippines; Romania; Spain; Sri Lanka; Thailand; Turkey; USSR<sup>37</sup>; and Zambia). All but two of these agreements (Japan's DTCs with Zambia and Germany) note that information is to be exchanged for carrying out the provisions of domestic laws. As Japan's domestic laws are applicable to non-residents as well as to residents, under these agreements information can be exchanged in respect of all persons. Japan's agreements with Zambia and Germany are limited to

36. As applicable to Slovak Republic and Czech Republic.

37. As applicable to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.



providing exchange of information assistance for carrying out provisions of the Convention.

273. Japan's competent authority has advised that it has not had any difficulties with any of its exchange of information partners with respect to this issue. Japan has provided and received information unrestricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

### ***Obligation to exchange all types of information (ToR C.1.3)***

274. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD *Model Taxation Convention*, which is an authoritative source of the standards, stipulates that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

275. Fourteen of Japan's DTCs provides that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person (Australia (2008); Belgium (2010); Brunei (2009); France (2007); Hong Kong, China (2010); Kazakhstan (2008); Kuwait (2010); Luxembourg (2010); Malaysia (2010); Netherlands (2010); Saudi Arabia (2010); Singapore (2010); Switzerland (2010); United Kingdom (2006)). Japan's policy is to incorporate wording in line with Article 26(5) in all of its new agreements.

276. Although Japan's other DTCs do not include such a provision, there are no limitations in Japan's laws with respect to access to bank information, information held by nominees, and ownership and identity information. There may be, however, such limitations in place in the domestic laws of some of its treaty partners (e.g. Austria). In these cases, the absence of a specific provision requiring exchange of bank information unlimited by bank secrecy may serve as a limitation on the exchange of information which can occur under the relevant DTC. In practice, Japan has experienced no difficulties arising from such limitations. It is recommended, however, that Japan continue to monitor effective exchange of information between such treaty partners and, if necessary, renegotiate its older DTCs to incorporate wording in line with Article 26(5) of the OECD *Model Taxation Convention*.

277. Japan’s TIEAs include the provisions contained in Article 5(4) subparagraphs (a) and (b) of the OECD *Model TIEA*, obliging the contracting parties to exchange all types of information.

***Absence of domestic tax interest (ToR C.1.4)***

278. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

279. Japan’s DTCs with Australia, Belgium, Brunei, France, Hong Kong, Kazakhstan, Kuwait, Luxembourg, Malaysia, Netherlands, Saudi Arabia, Singapore, Switzerland, United Kingdom and United States incorporate wording in line with Article 26(4) of the OECD *Model Taxation Convention*, obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. Japan’s other DTCs do not contain such a provision. There are, however, no domestic interest restrictions on Japan’s powers to access information. Japan is able to exchange information, including in cases where the information is not publicly available or already in the possession of the governmental authorities as noted in section B.2 of this report.

280. A domestic tax interest requirement may however exist for some of Japan’s treaty partners. In such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information which can occur under the relevant DTC. In practice, Japan has experienced no difficulties arising from domestic tax interest provisions in its partner jurisdictions. No requests for information have been declined on this basis. It is recommended, however, that Japan continue to monitor effective exchange of information in place between such treaty partners and, if necessary, renegotiate its older DTCs to incorporate wording in line with Article 26(4) of the OECD *Model Taxation Convention*.

281. Japan’s TIEAs allow information to be obtained and exchanged notwithstanding it is not required for any domestic tax purpose.

***Absence of dual criminality principles (ToR C.1.5)***

282. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if

it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

283. There are no dual criminality requirements in Japan’s agreements for exchange of information in tax matters.

***Exchange of information in both civil and criminal tax matters (ToR C.1.6)***

284. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

285. All of Japan’s exchange of information agreements provide for exchange of information in both civil and criminal tax matters. Indeed, some of Japan’s agreements refer to fighting fiscal evasion as one of the objects of the agreement and in others, the first paragraph of the exchange of information provision provides that the information exchange will occur *inter alia* “for the prevention of evasion or avoidance of, or fraud in relation to, such taxes”.

286. Japan provides exchange of information assistance at the administrative level (National Tax Agency, Criminal Investigation Division) when the requested information relates to a criminal tax matter in the requesting jurisdiction. Where search and seizure is necessary, Tax Collectors (criminal investigators) must obtain a permit from a judge prior to exercising this authority. Japan’s competent authority reports that criminal cases are given as much priority as possible.

***Provide information in specific form requested (ToR C.1.7)***

287. Exchange of information mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction’s domestic laws and practices.

288. There are no restrictions in the exchange of information provisions in Japan’s DTCs and TIEAs that would prevent Japan from providing information in a specific form, as long as this is consistent with its own administrative practices. Japan’s DTC with the United States (2003) includes a specific clause to reinforce the need to provide information in the form requested (in the form of authenticated copies of original documents).

289. Japan’s competent authority provides information in the specific form requested to the extent permitted under Japanese law and administrative

practice. As noted in section B.1 of this report, Japan’s tax authorities do not have the power to compel testimony from taxpayers or third parties. However, persons failing to respond to, or providing false information in response to, inquiries from tax officials in Japan’s tax authorities may be penalised pursuant to the *Tax Treaty Special Provisions Act*.

290. Japan’s competent authority is prepared to provide information in the specific form requested to the extent permitted under Japanese law and administrative practice. Information received from partner jurisdictions with an exchange of information relationship with Japan indicates that Japan is able to respond to such requests.

### ***In force (ToR C.1.8)***

291. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

292. Japan has an extensive network of 54 bilateral agreements that provide for exchange of information in tax matters (covering 65 partners), comprising 50 DTCs and 4 TIEAs. Japan signed three Protocols to DTCs (Belgium; Luxembourg; Switzerland) and four new DTCs (Hong Kong, China; Kuwait; Netherlands; Saudi Arabia) in 2010 that are awaiting ratification. Japan signed TIEAs with The Bahamas, the Cayman Islands and the Isle of Man in 2011 that also await ratification. All of Japan’s other agreements providing for exchange of information in tax matters are in force.

293. Approximately 80% of Japan’s agreements have entered into force within 12 months of signing. For some agreements, the period of time between signature and entering into force has been as brief as 6 months.<sup>38</sup> Only six agreements took substantially longer periods before they entered into force, those with: Brazil (21 months); Canada (21 months); Belgium (24 months); Philippines (24 months); Romania (26 months); and Poland (34 months).

294. After an international agreement is signed, it is submitted to the Diet for its approval when required according to Japan’s constitutional practices. Treaties enter into force only after the final exchange of diplomatic notes between jurisdictions notifying each other that have completed their domestic procedures. Japan’s government endeavours to bring Japan’s DTCs and TIEAs into force as soon as possible after signature.

38. Vietnam (2 months); India (4 months); Bangladesh (4 months); Bulgaria (5 months); Thailand (5 months); United States (5 months); Bermuda (6 months); Denmark (6 months); New Zealand (6 months).

***In effect (ToR C.1.9)***

295. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

296. All of Japan’s agreements which have been signed and concluded by both parties are in effect in Japan. Japan’s DTCs and TIEAs are subject to the approval of the Diet when required according to Japan’s constitutional practices. Article 98(2) of Japan’s *Constitution* provides that “treaties concluded by Japan and established laws of nations shall be faithfully observed”.

297. As noted previously in this report, Japan’s legal and regulatory framework is in place to ensure availability and access to information required for international tax matters. As such, Japan’s international agreements have been given effect to in its national legislation.

298. Japan’s competent authority has a developed institutional framework that supports effective exchange of information. It has written administrative procedures to be followed by exchange of information staff for processing, co-ordinating, and responding to incoming requests. The competent authority’s administrative guidelines provide procedures for the co-ordination between the competent authority, Regional Taxation Bureaus, and Tax Offices. The guidelines establish a commitment by the tax authorities to provide exchange of information assistance in a timely manner.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

**C.2. Exchange-of-information mechanisms with all relevant partners**

The jurisdictions’ network of information exchange mechanisms should cover all relevant partners.

299. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into

agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

300. Japan has an extensive treaty network that covers all of its major trading partners (United States; the People's Republic of China; Hong Kong, China; the Republic of Korea; Singapore; Saudi Arabia; Indonesia; Germany; Australia). Japan has signed exchange of information agreements with 34 OECD/G20 countries<sup>39</sup> and 43 of the 96 Global Forum members.<sup>40</sup> Two of Japan's agreements with its major trading partners – Hong Kong, China and Saudi Arabia – are not yet in force. It is recommended that Japan continue to work with these jurisdictions to bring these agreements into force expeditiously.

301. Japan currently has several treaty discussions in various stages of progress (2 formal negotiations are underway as of May 2011). In all cases, Japan expects that the outcome in terms of exchange of information provisions will be to the international standard.

302. Comments were sought from Global Forum member jurisdictions in the course of the preparation of this report. One jurisdiction informed the assessment team that it requested a TIEA with Japan and received a negative response. Japan's competent authority has advised that it, in turn, asked the jurisdiction whether it would consider negotiating a DTC because of the close economic ties between the jurisdictions. The assessment team was also advised that the jurisdiction never responded to Japan's inquiry. There is no other indication that Japan has not entered into an agreement with a jurisdiction when requested to do so.

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39. Australia; Austria; Belgium; Brazil; Canada; the People's Republic of China; the Czech Republic; Denmark; Finland; France; Germany; Hungary; India; Indonesia; Ireland; Israel; Italy; the Republic of Korea; Luxembourg; Mexico; the Netherlands; New Zealand; Norway; Poland; Russia; Saudi Arabia; the Slovak Republic; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; the United States.

40. Australia; Austria; The Bahamas; Belgium; Bermuda; Brazil; Brunei; Canada; the Cayman Islands; the People's Republic of China; Czech Republic; Denmark; Finland; France; Germany; Hungary; Hong Kong, China; India; Indonesia; Ireland; the Isle of Man; Israel; Italy; the Republic of Korea; Luxembourg; Malaysia; Mexico; the Netherlands; New Zealand; Norway; the Philippines; Poland; Russia; Saudi Arabia; Singapore; the Slovak Republic; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; the United States.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Japan should continue to develop its exchange of information network with all relevant partners.
Phase 2 rating	
To be finalised as soon as a representative subset of Phase 2 reviews is completed	

### C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

#### *Information received: disclosure, use, and safeguards (ToR C.3.1)*

303. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

304. All exchange of information articles in Japan's DTCs have confidentiality provisions modeled on Article 26(2) of the OECD *Model Taxation Convention*. Likewise, all of Japan's TIEAs have confidentiality provisions modeled on Article 8 of the OECD *Model TIEA*.

305. The confidentiality provisions of Japan's DTCs and TIEAs are backed by general confidentiality provisions in Japan's domestic legislation. Article 126 of the *Act on General Rules for National Taxes* imposes an obligation on Japan's tax authorities to maintain strict confidentiality in respect of any information obtained through their work. Non-compliance with Article 126 subjects Japan's tax officials to imprisonment with work for a term not exceeding two years or a fine of not more than JPY 1 million



(EUR 8 695). Article 100 of the *National Public Service Act* also imposes an obligation on Japan's public officials (including retired officials) to maintain strict confidentiality in respect of information they obtain through their work. Non-compliance with article 100 subjects Japan's public officials to imprisonment with work for a term not exceeding 1 year or a fine not exceeding JPY 500 thousand (EUR 4 348). Based on the purpose of the *Act on the Protection of Personal Information Held by Administrative Organs*, the National Tax Agency reports that it strives to ensure that confidentiality of taxpayer information is maintained by conducting periodic inspections of the controls in place at Regional Taxation Bureaus, Tax Offices, and the National Tax Agency itself.

306. The National Tax Agency's administrative guidelines for exchange of information for tax purposes contain provisions regarding the confidentiality of information exchanged. Only exchange of information staff within the International Operations Division, as well as officials within Regional Taxation Bureaus and Tax Offices responsible for gathering information have access to information contained in exchange of information requests and the information obtained in response to those requests. Where information cannot be exchanged electronically between Japan's competent authority and Regional Taxation Bureaus (including Tax Offices), Japan uses a special certified mail service established solely for the National Tax Agency.

### ***All other information exchanged (ToR C.3.2)***

307. The confidentiality provisions in Japan's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>



## C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

### *Exceptions to requirement to provide information (ToR C.4.1)*

308. Each of Japan’s exchange of information agreements ensures that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.

309. As noted in section B.1 of this report, Japan’s domestic law permits the disclosure of information to the extent that it is required to be disclosed by a DTC or TIEA. Japan’s DTCs and TIEAs specifically provide that trade, business, industrial, commercial or professional secrets are not required to be disclosed. Similarly, they do not require the disclosure of information that would be contrary to public policy. Therefore, information that falls into these categories remains protected under Japan’s domestic laws and requests for such information are declined. Japan reports that, to date, no such matter has arisen. As noted previously in Section B.1 of the report, professional privileges in Japan are in line with the standard.

310. Currently, Japan generally follows the “mutuality” provision in Article 26 of the OECD *Model Taxation Convention* and the Commentary thereto. This has the effect of removing from Japan any obligation to carry out administrative measures or otherwise supply information to a requesting jurisdiction if that requesting jurisdiction is not itself able to carry out corresponding administrative measures or to obtain the information under its laws or in the normal course of its administration. The National Tax Agency reports that, to date, no such matter has arisen.

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

## C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

### *Responses within 90 days (ToR C.5.1)*

311. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

312. There are no provisions in Japan's laws or in its DTCs pertaining to the timeliness of responses or the timeframe within which responses should be provided. Japan's TIEAs include an obligation to either respond to the request, or provide a status update within 90 days of receipt of the request. As such, there appear to be no legal restrictions on the ability of Japan's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

313. The statistics held by Japan's competent authority reveal that for the last three years ending on 31 December 2009, 20.2% of requests were responded to within 90 days, 30.1% of requests were responded to within 180 days, 38.7% of requests were responded to within one year, and 11% of requests were responded to in one year or more. As such, approximately 90% of requests were responded to within one year.<sup>41</sup> As seen during the on-site visit, Japan gives priority to urgent requests. Requests that cannot be fulfilled within 90 days typically relate to cases where it is necessary to gather the requested information through on-site examinations. Input received from Japan's peers confirms that in many cases Japan does not respond to requests for information within 90 days of receipt by providing the information requested or an update on the status of the request.

314. Japan's competent authority does not systematically provide requesting jurisdictions with a status update when requests cannot be responded to within 90 days. Japan's tax authorities report, however, that they routinely contact requesting jurisdictions as soon as possible where a request is unclear or additional information is necessary to action a request. As a result, some kind of contact with the requesting jurisdiction is made in most cases within 90 days of receipt of a request.

41. The number of days for providing requested information is counted from the date of receipt of the request to the date the response letter is sent out, and includes the period for which any clarifying questions are made to the requesting jurisdiction.

315. For complicated cases or cases for which prompt responses are required, staff in charge of such cases are dispatched to partner jurisdictions for face-to-face meetings to explain the details of the cases to the officials in charge of administering each of the respective jurisdiction's exchange of informing programs (this program is implemented with several different jurisdictions as required). Additionally, Japan's competent authority reports that it plans to have periodical meetings with jurisdictions with which it has a significant exchange of information relationship or has strong mutual economic ties in order to update the status of requests, as well as to exchange views pertaining to matters of interest for both jurisdictions regarding exchange of information.

316. Japan also has a program of dispatching tax officials as long-term visitors in partner jurisdictions. In particular, Japan has tax officials in Australia; Canada; the People's Republic of China; France; Germany; Hong Kong, China; Indonesia; the Republic of Korea; the Netherlands; the Philippines; Singapore; Thailand; the United Kingdom; and the United States. These officials are authorised by Japan's competent authority to assist in matters pertaining to exchange of information requests. Japan's National Tax Agency reports that these officials maintain good relationships with the respective foreign jurisdiction's competent authority and facilitate discussions regarding exchange of information requests. Many of Japan's exchange of information partners provided positive feedback regarding this program.

317. Japan's National Tax Agency reports that, as a capital-exporting jurisdiction, it makes more outbound requests for information to its exchange of information partners than it receives inbound requests. As such, the National Tax Agency strives to provide thorough and comprehensive responses in a timely fashion to ensure reciprocal treatment from its exchange of information partners. This is emphasised to all personnel handling exchange of information requests in Japan's Regional Taxation Bureaus and Tax Offices.

### ***Monitoring***

318. Japan's competent authority uses performance measures to internally monitor its exchange of information program. Records are kept on excel files called "management records" that record the day a request for information is received and the day the response is sent to the requesting jurisdiction. Japan's competent authority reviews the management records on a quarterly basis. The time engaged on cases generally varies with the complexity of the subject matter and volume of information requested. Periodically, Japan's competent authority requests follow-up reports from Regional Taxation Bureaus in cases where a request is long outstanding. However, the National Tax Agency does not have internal guidelines for how long each step in the

process should take when responding to a request, without which exchange of information could be delayed.

### ***Organisational process and resources (ToR C.5.2)***

319. Japan's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by Japan's competent authority, being the Minister of Finance or an authorised representative of the Minister. The Director of the International Operations Division under the National Tax Agency is authorised to act as competent authority and, in practice, is responsible for managing and responding to all of Japan's exchange of information requests. The International Operations Division is based in Tokyo. Japan's competent authority forwards letters of notification identifying itself to Japan's exchange of information partners. In cases where any change occurs, letters of notification are sent out on each such occasion.

320. The International Tax Policy Division, under the Tax Bureau of the Ministry of Finance, is in charge of researching, planning, and drafting international tax treaties and laws and regulations of taxation on incomes of non-residents and foreign corporations and systems of foreign tax credit.

321. The Exchange of Information Section of Japan's International Operations Division administers operations pertaining to exchange of information. The Section is staffed with six full time staff in Tokyo. In addition, 19 officials within the International Operations Division are currently dispatched to foreign jurisdictions as long-term overseas visitors. The Director of the International Operations Division authorises its staff to act as competent authority on a case-by-case basis. In 2010, Japan increased the number of staff working in the Exchange of Information Section by two as a result of an increase in the number of inbound and outbound requests. Further increases in staff are being considered in order to promote exchange of information more actively within Japan.

322. Two of the long-term overseas dispatched visitors serve at the JITSIC London office. These officials are involved in exchange of information concerning individual taxpayers, and also share information, examination methods, best practices and other intelligence with JITSIC member jurisdictions concerning international tax avoidance schemes. The other long-term overseas visitors are currently dispatched to 14 jurisdictions, where they are active in collecting general information pertaining to tax administration, tax systems, economic conditions and customs of trade in the jurisdictions in which they are stationed, as well as assisting in exchange of information operations.

323. All staff within Japan's National Tax Agency receive training regarding the administration of Japan's tax laws. The National Tax College is the National Tax Agency's principal training organization. The National Tax

College is an affiliated organ of the National Tax Agency. It mainly offers training courses for the Ministry of Finance officials to engage in national tax administration work. In addition to the central institute in Tokyo, 12 regional training centres are established in cities where Regional Taxation Bureaus and the Okinawa Regional Taxation Office are located.

324. Specialised international taxation training courses are held for Regional Taxation Bureau and Tax Office officials periodically each year. The Director of the International Operations Division (Japan's competent authority for exchange of information) as well as other senior staff within the Exchange of Information Section provides instruction at these courses regarding issues pertaining to exchange of information, including procedures for processing and retrieving information in response to inbound requests. Additionally, the Exchange of Information Section uses manuals, including the *OECD Manual on Information Exchange*, to instruct new staff within the division.

325. Japan has internal administrative procedures for processing incoming requests for information, including procedures relating to the exchange of information staff receiving requests and to Regional Taxation Bureaus and Tax Offices that are sources of common types of information requested. These manuals are available on the National Tax Agency's internal website for all tax officials within the National Tax Agency. The manuals explain the outline of the Japan's legal and regulatory framework for exchange of information (e.g. provisions under the *Tax Treaties Special Provisions Act*), detailed procedures for processing and retrieving requested information, and case studies. Designed for use by Japan's competent authority staff, these manuals also offer explanations of the key points for preparing letters of response to requesting jurisdictions.

326. The staff within the Exchange of Information Section use check-sheets (Forms 6-1, 6-2) to process inbound requests and for sending responses back to requesting jurisdictions. Where a request is unclear or incomplete, Japan's competent authority routinely seeks clarifying or additional information from the requesting jurisdiction. Co-ordination procedures between the competent authority, Regional Taxation Bureaus, and Tax Offices are clearly defined in administrative guidelines and effective in practice.

327. Overall Japan has dedicated appropriate financial, human and technical resources to the various areas of its exchange of information regime considering the volume of inbound requests it receives. All competent authority staff maintain high professional standards and have adequate expertise and training specific to exchange of information.

***Absence of restrictive conditions on exchange of information  
(ToR C.5.3)***

328. There are no laws or regulatory practices in Japan that impose unreasonable, disproportionate, or unduly restrictive conditions on exchange of information.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>	
<b>Phase 2 rating</b>	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
In many cases, Japan does not respond within 90 days to international requests for information in tax matters and does not provide requesting parties with status updates.	Japan should ensure that it is able to respond to exchange of information requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.
Japan's domestic procedures for handling exchange of information requests, in particular the lack of internal timelines for responding to requests, appear to inhibit expedient response times.	Japan should ensure that its authorities have in place procedures, including appropriate internal deadlines, to be able to respond to exchange of information requests in a timely manner.

## Summary of Determinations and Factors Underlying Recommendations<sup>42</sup>

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities ( <i>ToR A.1</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements ( <i>ToR A.2</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		

42. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders ( <i>ToR A.3</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) ( <i>ToR B.1</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The rights and safeguards ( <i>e.g.</i> notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information ( <i>ToR B.2</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		



Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information ( <i>ToR C.1</i> )		
<b>Phase 1 determination:</b> The element is in place.		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners ( <i>ToR C.2</i> )		
<b>Phase 1 determination:</b> The element is in place.		Japan should continue to develop its exchange of information network with all relevant partners.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received( <i>ToR C.3</i> )		
<b>Phase 1 determination:</b> The element is in place.		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties ( <i>ToR C.4</i> )		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdiction should provide information under its network of agreements in a timely manner ( <i>ToR C.5</i> )		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	In many cases, Japan does not respond within 90 days to international requests for information in tax matters and does not provide requesting parties with status updates.	Japan should ensure that it is able to respond to exchange of information requests in a timely manner, by providing the information requested within 90 days of receipt of the request, or if it has been unable to do so, to provide a status update.
	Japan's domestic procedures for handling exchange of information requests, in particular the lack of internal timelines for responding to requests, appear to inhibit expedient response times.	Japan should ensure that its authorities have in place procedures, including appropriate internal deadlines, to be able to respond to exchange of information requests in a timely manner.

## **Annex 1: Jurisdiction’s Response to the Review Report<sup>43</sup>**

Japan is committed and fully endorses the international standards for transparency and exchange of information. Japan is pleased to support the work of the Global Forum as a member of the Steering Group and Vice Chair of Peer Review Group since the Global Forum was established.

Japan has a long history in exchange of information and international tax co-operation. Since the 1950s, Japan has expanded its network of bilateral agreements to have 65 EoI partners. The large majority of Japan’s agreements are consistent with the international standard. While we believe that Japan has not encountered many EoI problems in practice in the past, we will continue our effort to further efficient and effective EoI practices.

Japan agrees with the contents of this peer review report. The report provides an objective representation of our legal and regulatory framework for transparency and EoI and the effectiveness of our framework.

Finally, Japan would like to extend its sincere appreciation to the assessment team for their hard work and professionalism throughout the peer review process. Japan is also grateful to other members of the Peer Review Group for providing valuable input and comments to Japan’s combined peer review report.

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43. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

## Annex 2: List of all Exchange-of-Information Mechanisms in Force

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Armenia*	Double Taxation Convention (“DTC”)	18 Jan 1986	27 Nov 1986
2	Australia	DTC	31 Jan 2008	03 Dec 2008
3	Austria	DTC	20 Dec 1961	04 Apr 1963
4	Azerbaijan*	DTC	18 Jan 1986	27 Nov 1986
5	Bahamas	Taxation Information Exchange Agreement (“TIEA”)	27 Jan 2011	---
6	Bangladesh	DTC	28 Feb 1991	15 Jun 1991
7	Belarus*	DTC	18 Jan 1986	27 Nov 1986
8	Belgium	DTC DTC (Protocol)	09 Nov 1988 26 Jan 2010	16 Nov 1990 ---
9	Bermuda	TIEA	01 Feb 2010	1 Aug 2010
10	Brazil	DTC	23 Mar 1976	29 Dec 1977
11	Brunei	DTC	20 Jan 2009	19 Dec 2009
12	Bulgaria	DTC	07 Mar 1991	09 Aug 1991
13	Canada	DTC	19 Feb 1999	14 Dec 2000
14	Cayman Islands	TIEA	07 Feb 2011	---
15	China	DTC	06 Sep 1983	26 Jun 1984
16	Czech Republic**	DTC	11 Oct 1977	25 Nov 1978
17	Denmark	DTC	03 Feb 1968	26 Jul 1968
18	Egypt	DTC	03 Sep 1968	06 Aug 1969

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
19	Fiji***	DTC	04 Sep 1962	23 Apr 1963
20	Finland	DTC	04 Mar 1991	28 Dec 1991
21	France	DTC	11 Jan 2007	01 Dec 2007
22	Georgia*	DTC	18 Jan 1986	27 Nov 1986
23	Germany	DTC	17 Feb 1983	04 May 1984
24	Hungary	DTC	13 Feb 1980	25 Oct 1980
25	Hong Kong, China	DTC	09 Nov 2010	---
26	India	DTC	24 Feb 2006	28 Jun 2006
27	Indonesia	DTC	03 Mar 1982	31 Dec 1982
28	Ireland	DTC	18 Jan 1974	04 Dec 1974
29	Isle of Man	TIEA	21 Jun 2011	---
30	Israel	DTC	08 Mar 1993	24 Dec 1993
31	Italy	DTC	14 Feb 1980	28 Jan 1982
32	Kazakhstan	DTC	19 Dec 2008	30 Dec 2009
33	Korea	DTC	08 Oct 1998	22 Nov 1999
34	Kuwait	DTC	17 Feb 2010	---
35	Kyrgyzstan*	DTC	18 Jan 1986	27 Nov 1986
36	Luxembourg	DTC DTC(Protocol)	05 Mar 1992 25 Jan 2010	27 Dec 1992 ---
37	Malaysia	DTC DTC (Protocol)	19 Feb 1999 10 Feb 2010	31 Dec 1999 01 Dec 2010
38	Mexico	DTC	09 Apr 1996	06 Nov 1996
39	Moldova*	DTC	18 Jan 1986	27 Nov 1986
40	Netherlands	DTC DTC	04 Mar 1992 25 Aug 2010	16 Dec 1992 ---
41	New Zealand	DTC	22 Mar 1967	30 Sep 1967
42	Norway	DTC	04 Mar 1992	16 Dec 1992
43	Pakistan	DTC	23 Jan 2008	09 Nov 2008
44	Philippines	DTC	09 Dec 2006	05 Dec 2008
45	Poland	DTC	20 Feb 1980	23 Dec 1982
46	Romania	DTC	12 Feb 1976	09 Apr 1978
47	Russia*	DTC	18 Jan 1986	27 Nov 1986
48	Saudi Arabia	DTC	15 Nov 2010	---

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
49	Singapore	DTC DTC (Protocol)	09 Apr 1994 04 Feb 2010	28 Apr 1995 14 July 2010
50	Slovak Republic**	DTC	11 Oct 1977	25 Nov 1978
51	South Africa	DTC	07 Mar 1997	05 Nov 1997
52	Spain	DTC	13 Feb 1974	20 Nov 1974
53	Sri Lanka	DTC	12 Dec 1967	22 Sep 1968
54	Sweden	DTC	19 Feb 1999	25 Dec 1999
55	Switzerland	DTC (Protocol)	21 May 2010	---
56	Tajikistan*	DTC	18 Jan 1986	27 Nov 1986
57	Thailand	DTC	07 Apr 1990	31 Aug 1990
58	Turkey	DTC	08 Mar 1993	28 Dec 1994
59	Turkmenistan*	DTC	18 Jan 1986	27 Nov 1986
60	Ukraine*	DTC	18 Jan 1986	27 Nov 1986
61	United Kingdom	DTC	02 Feb 2006	12 Oct 2006
62	United States	DTC	06 Nov 2003	30 Mar 2004
63	Uzbekistan*	DTC	18 Jan 1986	27 Nov 1986
64	Vietnam	DTC	24 Oct 1995	31 Dec 1995
65	Zambia	DTC	19 Feb 1970	23 Jan 1971

\* Japan continues to apply the U.S.S.R. treaty of 18 January 1986 in relations with Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan (11 jurisdictions).

\*\* Japan continues to apply the Czechoslovakia treaty of 11 October 1977 in relations with the Slovak Republic and the Czech Republic.

\*\*\* By Exchange of Notes of September 25, 1970 between the Government of Japan and the Government of the United Kingdom, the Japan-UK treaty of 4 September 1962 was extended to Fiji. The current Japan-UK treaty is a new treaty, different from the Japan-UK treaty of 4 September 1962.

## **Annex 3: List of all Laws, Regulations and Other Relevant Material**

### **Commercial Laws**

Commercial Code  
Companies Act  
Limited Liability Partnership Act  
Limited Partnership Act for Investment  
Act on Authorization of Public Interest Incorporated Associations and  
Public Interest Incorporated Foundations  
General Incorporated Associations and General Incorporated Foundations  
Act  
Act on Engagement in Trust Business by a Financial Institution  
Trust Act  
Trust Business Act  
Electronic Bookkeeping Act

### **Taxation Laws**

Corporation Tax Act  
Income Tax Act  
Act on Special Measures Concerning Taxation  
Act on Special Provisions of the Income Tax Act, the Corporation Tax  
Act and the Local Tax Act Incidental to Enforcement of Tax Treaties  
Local Tax Act

## **Banking and Financial Laws**

Financial Instruments and Exchange Act

Insurance Business Act

Banking Act

Act on Investment Trusts and Investment Corporation

Act on Securitization of Assets

## **Anti-Money Laundering Laws**

Act on Prevention of Transfer of Criminal Proceeds

## **Other Laws**

The Constitution of Japan

Civil Code

Act on the Protection of Personal Information

National Public Service Act

Attorney Act

Judicial Scrivener Act

Local Autonomy Act



## **Annex 4: People interviewed during on-site visit**

### **Ministry of Finance – Tax Bureau**

Director, International Tax Policy Division  
Director for International Tax and Treaties  
Deputy Director, International Tax Policy Division

### **National Tax Agency (Central)**

Deputy Director, Individual Taxation Division, Taxation Department  
Deputy Director, Property Taxation Division, Taxation Department  
Deputy Director, Corporation Taxation Division, Taxation Department  
Assistant Director, Large Enterprise Examination Division  
Deputy Director, Criminal Investigation Division

### **International Operations Division**

Deputy Director  
Acting Section Chief, Exchange of Information Section

### **Regional Taxation Bureau (Tokyo)**

Deputy Chief Examiner, International Examination of Large Enterprise  
Division  
Senior Examiner (International Taxation), Co-ordination Division (Large  
Enterprise Examination)

**Ministry of Justice**

Attorney, Civil Affairs Bureau

**Financial Intelligent Unit – National Police Agency**

Superintendent Assistant Director, Japan Financial Intelligence Center

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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, COMBINED: PHASE 1 + PHASE 2

### JAPAN

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

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