

Annex 6
Referred to in Chapter 9 (Trade in Services) and Chapter 14
(Investment)

NON-CONFORMING MEASURES RELATING TO PARAGRAPH 1 OF ARTICLES
9.7 and 14.10

PART 1
SCHEDULE OF AUSTRALIA

Section 1
Notes for Sections 2 and 3

1. Section 2 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), Australia's existing measures that are not subject to some or all of the obligations imposed by:

- (a) Article 9.3 (Trade in Services - Market Access);
- (b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (c) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);
- (d) Article 9.6 (Trade in Services - Local Presence);
- (e) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Section 3 of the Schedule of Australia sets out, pursuant to Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), Australia's additional existing measures with respect to or relating to trade in financial services that are not subject to some or all of the obligations imposed by:

- (a) Article 9.3 (Trade in Services - Market Access);
- (b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (c) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);
- (d) Article 9.6 (Trade in Services - Local Presence);
- (e) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (f) Article 14.9 (Investment - Prohibition of Performance Requirements).

Note 1: Commitments on measures with respect to or relating to trade in financial services are undertaken subject to the limitations and conditions set forth in Chapter 9 (Trade in Services), Chapter 11 (Financial Services), Chapter 14 (Investment), this Section and the Schedule below.

Note 2: To clarify Australia's commitment with respect to Article 9.3 (Trade in Services - Market Access), enterprises supplying financial services and constituted under the laws of Australia are subject to non-discriminatory limitations on juridical form.¹

Note 3: Without prejudice to other means of prudential regulation of cross-border trade in financial services, Australia reserves the right to require the non-discriminatory licensing or registration of cross-border financial service suppliers of Japan and of financial instruments in accordance with Article 11.4 (Financial Services - Domestic Regulation).

¹ For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. This note is not itself intended to affect, or otherwise limit, a choice by a financial service supplier of the other Party between branches or subsidiaries.

Note 4: Australia reserves the right to adopt or maintain non-discriminatory limitations concerning admission to the market of new financial services where such measures are required to achieve prudential objectives. Australia may determine the institutional and juridical form through which a new financial service may be supplied and may require authorisation for the supply of the service. Where authorisation to supply a new financial service is required, the authorisation may only be refused for prudential reasons.

3. Each Schedule entry sets out the following elements:

- (a) "Sector" refers to the sector for which the Schedule entry is made;
- (b) "Obligations Concerned" specifies the obligation(s) referred to in paragraph 1 that, pursuant to subparagraph 1(a) of Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), do not apply to the listed measure(s);
- (c) "Level of Government" indicates the level of government maintaining the listed measure(s);
- (d) "Source of Measure" means the laws, regulations or other measures that are the source of the non-conforming measure for which the Schedule entry is made. A measure cited in the "Source of Measure" element:
 - (i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement; and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
- (e) "Description" sets out the non-conforming measure for which the Schedule entry is made.

Note 1: In accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the articles of this Agreement specified in the "Obligations Concerned" element of an entry do not apply to the non-conforming measure identified in the "Description" element of that entry.

Note 2: A reference to National Treatment in the "Obligations Concerned" element of an entry specifies Australia's obligations under Article 9.4 (Trade in Services - National Treatment) and Article 14.3 (Investment - National Treatment).

4. Local Presence and National Treatment are separate disciplines and a measure that is only inconsistent with Local Presence (such as residency requirements) has not been reserved against National Treatment.

5. Where Australia maintains a measure that requires that a service supplier be a citizen, permanent resident or resident of its territory as a condition to the supply of a service in its territory, a Schedule entry for that measure taken with respect to Article 9.4 (Trade in Services - National Treatment), 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 9.6 (Trade in Services - Local Presence) shall operate as a Schedule entry with respect to Article 14.3 (Investment - National Treatment), 14.4 (Investment - Most-Favoured-Nation Treatment) or 14.9 (Investment - Prohibition of Performance Requirements) to the extent of that measure.

6. Australia reserves the right to maintain and to add to this Schedule any non-conforming measure at the regional level of government that existed at 1 January 2005, but was not listed in this Schedule at the date of entry into force of this Agreement, against the following obligations:

- (a) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (b) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);

- (c) Article 9.6 (Trade in Services - Local Presence);
- (d) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (e) Article 14.9 (Investment - Prohibition of Performance Requirements).

Section 2

1 Sector:	All Sectors
Obligations Concerned:	Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)
Level of Government:	Central and Regional
Source of Measure:	Australia's foreign investment policy, which includes the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth); <i>Foreign Acquisitions and Takeovers Regulations 1989</i> (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth) and Ministerial Statements. <i>Land Act 1994</i> (Qld); <i>Foreign Ownership of Land Register Act 1988</i> (Qld)
Description:	<u>Commonwealth</u> A. The following investments may be subject to objections by the Australian Government and may also require notification to the Government ² : (a) investments by foreign persons ³ of 5 per cent or more

² *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA). "Investments" means activities covered by Part II of FATA or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

³ A "foreign person" means, as defined in section 5 of the FATA:

- (a) a natural person not ordinarily resident in Australia;
- (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;

in the media sector,
regardless of the value of the
investment;

- (b) investments by foreign persons
in existing⁴ Australian
businesses, or prescribed
corporations,⁵ the value of

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- (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
 - (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
 - (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

⁴ For the purposes of this entry, "existing" means in existence at the time the investment is proposed or made.

⁵ For the purposes of this entry, "prescribed corporation" means:

- (a) a trading corporation;
- (b) a financial corporation;
- (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies;
- (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded 248 million Australian Dollars (for item (b) of the entry) or 1078 million Australian Dollars (for item (c) of the entry), being assets consisting of all or any of the following:
 - (i) land situated in Australia (including legal and equitable interests in such land);
 - (ii) mineral rights;
 - (iii) shares in a corporation incorporated in Australia;
- (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded 248 million Australian

whose assets exceeds 248 million[#] Australian Dollars in the following sectors:

- (i) the telecommunications sector;
- (ii) the transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia;
- (iii) the supply of training or human resources, or the manufacture or supply of military goods, equipment, or technology, to the Australian or other

Dollars (for item (b) of the entry) or 1078 million Australian Dollars (for item (c) of the entry);

- (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e) of this footnote;
- (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation; or
- (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

[#] This is the figure as at 1 January 2014. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year. If the Agreement has not entered into force by 1 January 2015, this figure will be indexed on the date of entry into force.

- defence forces;
- (iv) the manufacture or supply of goods, equipment or technologies able to be used for a military purpose;
 - (v) the development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and
 - (vi) the extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities;
- (c) investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies⁶, the value of whose total assets exceeds 1078 million[#] Australian Dollars;
- (d) acquisitions by foreign

⁶ A "financial sector company" means, as defined in section 3 of the *Financial Sector (Shareholdings) Act 1998*:

- (a) an authorised deposit-taking institution; or
- (b) an authorised insurance company; or
- (c) a holding company of a company covered by paragraph (a) or (b) of this footnote.

[#] This is the figure as at 1 January 2014. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year. If the Agreement has not entered into force by 1 January 2015, this figure will be indexed on the date of entry into force.

persons of developed non-residential commercial real estate valued at more than 1078 million[#] Australian Dollars;

- (e) direct investments by foreign government investors, irrespective of size;

Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to in (a) through (e) for which no notification is required or received may be subject to orders under Sections 18 through 21 and 21A of the FATA.

B. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control⁷ of an existing financial sector company, may be refused, or be subject to certain conditions⁸.

C. In addition to the measures identified in this entry, other entries in Annex 6 or Annex 7 set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:

- (a) Telstra;
- (b) Commonwealth Serum

⁷ "Unacceptable shareholding situation" and "practical control" as defined in the *Financial Sector (Shareholdings) Act 1998*.

⁸ Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

Laboratories;

- (c) Qantas Airways Ltd.;
- (d) Australian international airlines, other than Qantas;
- (e) urban land;
- (f) agricultural land;
- (g) agribusiness;
- (h) federal leased airports; and
- (i) shipping.

Queensland

Certain leases (obtained at ballot), and other leases at the discretion of the Minister, may be subject to a condition that the lessee personally lives on the lease for the first seven years of its term.

While all changes to ownership of land must be registered, there is an additional duty on foreign land holders to disclose, through a prescribed notification, present interests in and acquisitions of land, disposal of interests in land and notification on ceasing to be or becoming a foreign person.

Failure to provide the information causes a breach of the Act that may result in prosecution, the imposition of financial penalties and/or forfeiture of the interest in the land to the Crown.

2	Sector:	All Sectors
	Obligations Concerned:	Local Presence (Article 9.6)
	Level of Government:	Central
	Source of Measure:	<i>Corporations Act 2001</i> (Cth) <i>Corporations Regulations 2001</i> (Cth)
	Description:	<p>At least one director of a private company must be ordinarily resident in Australia.</p> <p>At least two directors of a public company must be ordinarily resident in Australia.</p> <p>At least one secretary of a private company (if such a private company appoints one or more secretaries) must be ordinarily resident in Australia.</p> <p>At least one secretary of a public company must be ordinarily resident in Australia.</p>

3	Sector:	All Sectors
	Obligations Concerned:	National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)
	Level of Government:	Regional
	Source of Measure:	<i>Associations Act</i> (NT) <i>Associations Incorporations Act 1991</i> (ACT) <i>Associations Incorporations Act 1981</i> (Qld) <i>Association Incorporations Act 1985</i> (SA) <i>Associations Incorporation Act 1964</i> (Tas) <i>Associations Incorporation Reform Act 2012</i> (Vic)
	Description:	<u>Northern Territory</u> An application for the incorporation of an association ⁹ must be made by a person who is a resident of the Northern Territory. The public officer of an incorporated association must be a person who is a resident of the Northern Territory. <u>Australian Capital Territory</u> An application for incorporation of an association must be made by a person who is a resident of the Australian Capital Territory. The public officer of an incorporated association must be a person who is a resident of the Australian Capital

⁹ "Association" includes a trading association.

Territory.

Queensland

The office of secretary shall become vacant if the person holding that office ceases to be a resident in Queensland, or in another State but not more than 65 km from the Queensland border.

The management committee of an incorporated association must ensure the secretary is an individual residing in Queensland, or in another State but not more than 65km from the Queensland border.

The members of the management committee of an incorporated association must ensure that the association has an address nominated for the service of documents on the association. The nominated address must be a place in the State where a document can be served personally on a person. A post office box is not a place that can be shown as a nominated address.

South Australia

The public officer of an incorporated association must be a person who is a resident of South Australia.

Tasmania

A person is not eligible to be appointed as a public officer of an incorporated association unless the person is resident in Tasmania.

Victoria

A person applying for the incorporation of an association must be an Australian resident.

The first secretary and secretary of an incorporated association must be Australian residents and the first secretary of an association applying for incorporation must be an Australian resident.

The first secretary of an amalgamated association must be an Australian resident.

4	Sector:	All Sectors
	Obligations Concerned:	Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)
	Level of Government:	Regional
	Source of Measure	<i>Cooperatives Act 2002 (ACT)</i> <i>Co-operatives (Adoption of National Law) Act 2012 (NSW)</i> <i>Co-operatives Act (NT)</i> <i>Cooperatives Act 1997 (Qld)</i> <i>Co-operatives Act 1997 (SA)</i> <i>Cooperatives Act 1999 (Tas)</i> <i>Co-operatives National Law Application Act 2013 (Vic)</i> <i>Co-operatives Act 2009 (WA)</i>
	Description:	<u>All Australian States and Territories</u> Except for South Australia, a cooperative must have a registered office in each state or territory in which it operates. In South Australia, registers must be kept at an office in South Australia. The secretary of a cooperative must be a person ordinarily resident in Australia. Excluding those states and territories which have implemented the Co-operatives National Law, a foreign cooperative must appoint a person who will act as agent of the cooperative in each state or territory in which it operates. Excluding those states and territories which have implemented the Co-operatives National Law, a foreign cooperative must appoint a person resident in each state or territory in

which it operates as a person on whom all notices and legal process may be served on behalf of the cooperative.

At least two of the directors of a cooperative must be Australian residents.

5	Sector:	All Sectors
	Obligations Concerned:	Local Presence (Article 9.6)
	Level of Government:	Regional
	Source of Measure:	<i>Partnership Act 1963</i> (ACT) <i>Partnership Act 1892</i> (NSW) <i>Partnership Act 1997</i> (NT) <i>Partnership Act 1891</i> (Qld) <i>Partnership Act 1891</i> (SA) <i>Partnership Act 1891</i> (Tas) <i>Partnership Act 1958</i> (Vic)
	Description:	<u>Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Victoria</u> A limited partnership or an incorporated limited partnership established in a State or Territory must have an office, principal office or registered office in that State or Territory.

6 Sector: Security Services

Obligations Concerned: National Treatment

Level of Government: Regional

Source of Measure: *Security Industry Act 1997 (NSW)*

Description: New South Wales

A person must be an Australian citizen or an Australian permanent resident to obtain a licence to carry on a security activity in New South Wales.

7 Sector:	All Sectors
Obligations Concerned:	Local Presence (Article 9.6)
Level of Government:	Regional
Source of Measure:	<i>Consumer Affairs and Fair Trading Act (NT)</i> <i>Consumer Affairs and Fair Trading (Trading Stamps) Regulations (NT)</i>
Description:	<u>Northern Territory</u> A promoter of a third party trading scheme ¹⁰ must maintain an office in Australia.

¹⁰ The term "third party trading scheme" means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition, which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession or advantage in connection with the acquisition of goods or services.

8 Sector: Professional Services

Obligations
Concerned: National Treatment

Level of
Government: Regional

Source of
Measure: *Legal Practitioners Act 1981 (SA)*

Description: South Australia

A company that is a subsidiary of a foreign law firm is not permitted to obtain a practising certificate and is not permitted to share profits with any other company or firm.

Foreign natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers in South Australia.

(A person is not taken to be practising the profession of the law if he or she is only providing legal advice or services relating to the law of a place outside Australia.)

9 Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Source of Measure: *Patents Act 1990* (Cth)
Patent Regulations 1991 (Cth)

Description: In order to register to practise in Australia, patent attorneys must be ordinarily resident in Australia¹¹.

¹¹ For the purposes of this entry, a person is taken to be "ordinarily resident" in Australia if the person has his or her home in Australia or Australia is the country of his or her permanent abode even though he or she is temporarily absent from Australia. However, the person is taken not to be "ordinarily resident" in Australia if he or she resides in Australia for a special or temporary purpose only.

10	Sector:	Professional Services
	Obligations Concerned:	Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)
	Level of Government:	Regional
	Source of Measure:	<i>Trustee Companies Act 1947</i> (ACT) <i>Trustee Companies Act 1964</i> (NSW) <i>Companies (Trustees and Personal Representatives) Act 1981</i> (NT) <i>Trustee Companies Act 1968</i> (Qld) <i>Trustee Companies Act 1988</i> (SA) <i>Trustee Companies Act 1953</i> (Tas) <i>Trustee Companies Act 1984</i> (Vic) <i>Trustee Companies Act 1987</i> (WA)
	Description:	<u>Northern Territory</u> A body corporate may not obtain a grant of probate or act as an executor of a will, or trustee of an estate of a deceased person unless it is a "licensed trustee company" as defined in section 601RAA of the <i>Corporations Act 2001</i> (Cth), or a body corporate authorised by a law of the Northern Territory to obtain a grant of probate and so act. <u>Western Australia</u> A company can only act as a trustee company in Western Australia if it is a "licensed trustee company" as defined in section 601RAA of the <i>Corporations Act 2001</i> (Cth). <u>All other Australian States and Territories</u> A body corporate may not obtain a grant of probate or act as an executor of a will and any codicil unless it is

a "licensed trustee company" within the meaning of Chapter 5D of the *Corporations Act 2001* (Cth).

11 Sector:	Professional Services
Obligations Concerned:	Local Presence (Article 9.6)
Level of Government:	Central and Regional
Source of Measure:	<i>Corporations Act 2001 (Cth)</i> <i>Co-operative Housing and Starr-Bowkett Societies Act 1998 (NSW)</i> <i>Legal Practitioners Act 1981 (SA)</i> <i>Legal Practitioners Regulations (SA)</i> <i>Estate Agents Act 1980 (Vic)</i>
Description:	<p><u>Commonwealth</u></p> <p>A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.</p> <p><u>New South Wales</u></p> <p>A person must be ordinarily resident in New South Wales in order to be an auditor of specified kinds of societies and associations.</p> <p><u>South Australia</u></p> <p>Persons who provide auditing services for legal practitioners' trust accounts must be public accountants engaged as a principal in practice in South Australia.</p> <p><u>Victoria</u></p> <p>A firm of auditors cannot audit an estate agent's accounts unless at least one member of the firm of auditors is an Australian resident.</p>

12 Sector:	Professional Services
Obligations Concerned:	Local Presence (Article 9.6)
Level of Government:	Regional
Source of Measure:	<i>Architects Act</i> (NT)
Description:	<u>Northern Territory</u> To qualify for registration as an architectural partnership or company, the partnership/company must have a place of business or be carrying on business within the Northern Territory.

13 Sector: Professional Services

Obligations
Concerned: National Treatment
Most-Favoured-Nation Treatment (Article
9.5)

Level of
Government: Central

Source of
Measure: *Migration Act 1958* (Cth)

Description: To practise as a migration agent in
Australia, a person must be an
Australian citizen or permanent
resident or a citizen of New Zealand
with a special category visa.

14 Sector: Professional Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Central

Source of Measure: *Customs Act 1901* (Cth)

Description: To act as a customs broker in Australia, service suppliers must provide the service in and from Australia.

15 Sector: Research and Development Services

Obligations
Concerned: National Treatment

Level of
Government: Regional

Source of
Measure: *Biodiscovery Act 2004 (Qld)*

Description: Queensland

Benefit sharing agreements require sublicences for use of samples or derivatives to conduct biodiscovery research and commercialisation to be offered first to Queensland-based entities, then to Australian-based entities, and then to overseas-based entities. Any entity with a benefit sharing agreement must obtain consent before granting a sublicense to an overseas-based entity.

16 Sector:	Real Estate and Distribution Services
Obligations Concerned:	National Treatment Local Presence (Article 9.6)
Level of Government:	Regional
Source of Measure:	<i>Community Land Management Act 1989</i> (NSW) <i>Strata Schemes Management Act 1996</i> (NSW) <i>Property, Stock and Business Agents Act 2002</i> (NSW) <i>Agents Licensing Act</i> (NT) <i>Agents Act 2003</i> (ACT) <i>Property Agents and Motor Dealers Act 2000</i> (Qld) <i>Estate Agents Act 1980</i> (Vic) <i>Conveyancers Act 2006</i> (Vic) <i>Real Estate and Business Agents Act 1978</i> (WA) <i>Real Estate and Business Agents (General) Regulations 1979</i> (WA) <i>Settlement Agents Act 1981</i> (WA) <i>Settlement Agents Regulations 1982</i> (WA)

Description: New South Wales

A person cannot be appointed as an agent (for a proprietor of a development lot, neighbourhood lot or strata lot) if they are not an Australian resident. A person cannot be appointed as an agent (for an owner of a lot, for dealings with the owner's corporation) if they are not an Australian resident. To be licensed as a property, stock, business, strata managing or community managing agent in NSW, licensees must have a registered office in New South Wales.

Northern Territory

A licensed agent¹² must maintain an office in Australia at or from which the conduct of business under the licence is to occur.

Australian Capital Territory

An estate agent must have their principal place of business in the Australian Capital Territory.

Queensland

In order to operate as a real estate agent, auctioneer, motor dealer or commercial agent, a person must have a business address in Queensland. This must be a physical address and not a post box.

Victoria

A person cannot be licensed as an estate agent unless they have a registered office in Victoria and they must maintain a principal office in

¹² A "licensed agent" includes a real estate agent, business agent or conveyancing agent.

Victoria. An agent's representative must have a registered address in Victoria to which documents can be sent.

A person cannot be licensed as a conveyancer or carry on a conveyancing business in Victoria unless they maintain a principal place of business in Victoria.

Western Australia

A person seeking to carry on business as a real estate or business agent in Western Australia must establish and maintain a registered office in the State.

A person seeking to carry on business as a settlement agent (conveyancer) in Western Australia must ordinarily reside in the State.

A licensed settlement agent must establish and maintain a registered office in the State.

17 Sector:	Fishing and Pearling
Obligations Concerned:	Market Access (Article 9.3) National Treatment Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)
Level of Government:	Central and Regional
Source of Measure:	<i>Fisheries Management Act 1991</i> (Cth) <i>Foreign Fishing Licences Levy Act 1991</i> (Cth) <i>Fisheries Management Act 1994</i> (NSW) <i>Fisheries Act 1995</i> (Vic) <i>Fish Resources Management Act 1994</i> (WA) <i>Pearling Act 1990</i> (WA) Ministerial Policy Guideline No. 17 of August 2001 (WA)
Description:	<u>Commonwealth</u> Foreign fishing vessels ¹³ seeking to undertake fishing activity in the Australian Fishing Zone must be authorised. Where foreign fishing vessels are authorised to undertake such fishing activity, they may be subject to a levy ¹⁴ .

¹³ For the purposes of this reservation, a "foreign fishing vessel" is one that does not meet the definition of an Australian boat under the *Fisheries Management Act 1991* (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

¹⁴ The levy charged will be in accordance with the *Foreign Fishing Licences Levy Act 1991* or any amendments thereto.

New South Wales

A foreign person or a foreign-owned body is not permitted to hold shares in a share management fishery.

Victoria

A fishery access licence or aquaculture licence can only be issued to a natural person who is an Australian resident, or to a single corporation that has a registered office in Australia.

Western Australia

Only an individual who is an Australian citizen or permanent resident may be a licensee within the Western Australian pearling industry.

In the case of corporations, partnerships or trusts holding licences, these must be Australian owned and/or controlled (at least 51 per cent of the issued share capital, partnership interest or trust property must be owned by Australians; the chairman, majority of the board of directors and all the company officers must be Australians and must be nominated by, and represent, Australian interests).

18 Sector:	Mining and Related Services
Obligations Concerned:	National Treatment Prohibition of Performance Requirements (Article 14.9)
Level of Government:	Regional
Source of Measure:	<i>Mount Isa Mines Limited Agreement Act 1985</i> (Qld)
Description:	<u>Queensland</u> The operator of Mount Isa Mines shall, so far as is reasonably and economically practicable: <ul style="list-style-type: none"> (a) use the services of professional consultants resident and available within Queensland; (b) use labour available within Queensland; (c) when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies ensure that Queensland suppliers, manufacturers, and contractors are given reasonable opportunity to tender or quote; and (d) give proper consideration and where possible preference to Queensland suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price,

quality, delivery and service
are equal to or better than
that obtainable elsewhere.

19 Sector: Distribution Services

Obligations Concerned: National Treatment

Level of Government: Regional

Source of Measure: *Rice Marketing Act 1983 (NSW)*
Marketing of Potatoes Act 1946 (WA)

Description: New South Wales and Western Australia

New South Wales retains marketing board arrangements for rice and Western Australia retains marketing board arrangements for potatoes.

20 Sector:	Other Business Services
Obligations Concerned:	Local Presence (Article 9.6) Senior Management and Boards of Directors (Article 14.8)
Level of Government:	Regional
Source of Measure:	<i>Prostitution Regulation Act</i> (NT)
Description:	<u>Northern Territory</u> To be eligible for the grant of an operator's licence or a manager's licence in respect of an escort agency business, an individual must be resident in the Northern Territory. For a body corporate to be granted an operator's licence, its officers must also meet the residency requirement.

21 Sector:	Communication Services
Obligations Concerned:	Market Access (Article 9.3) National Treatment Senior Management and Boards of Directors (Article 14.8)
Level of Government:	Central
Source of Measure:	<i>Telstra Corporation Act 1991 (Cth)</i>
Description:	Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares. The chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

22 Sector: Distribution Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: *Firearms Act* (NT)

Description: Northern Territory

Grant of a firearms licence¹⁵ requires residency in the Northern Territory. Licences and permits expire three months after the holder ceases to reside permanently in the Northern Territory.

¹⁵ Firearms licences include but are not limited to firearms dealer's licence, armourer's licence, firearms museum licence, firearms collector's licence, firearms employee licence, and paintball operator's licence.

23 Sector: Distribution Services

Obligations Concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: *Liquor Act* (NT) and policy and practice
Kava Management Act (NT)
Tobacco Control Act (NT) and policy and practice

Description: Northern Territory

The Northern Territory Licensing Commission may require a liquor licensee where the licensee is an individual, or at least one of the licensees where the licence is held by a partnership, or the licence nominee where the licence is held by a corporation, to ordinarily reside within the general locality of the premises to which the licence relates.

The holder of a tobacco retail licence may only sell tobacco products from the premises specified in the licence.

A tobacco retail licence in relation to liquor licensed premises may only be granted to the liquor licensee of those premises.

An applicant for a retail licence for kava must ordinarily reside or carry on business in the relevant licence area in the Northern Territory.

24 Sector: Distribution Services

Obligations Concerned: Performance Requirements (Article 14.9)

Level of Government: Regional

Source of Measure: *Wine Industry Act 1994* (Qld)

Description: Queensland

In order to obtain a wine merchant's licence to sell wine, the business conducted by a person under the licence must contribute to the Queensland wine industry in a substantial way. In order to obtain a wine producer's licence to sell wine, a person must be selling wine made from fruit grown by the person on the premises to which the licence relates, or selling wine made by the person on the premises to which the licence relates.

25 Sector: Health Services

Obligations Concerned: National Treatment

Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central

Source of Measure: *Commonwealth Serum Laboratories Act 1961* (Cth)

Description: The votes attached to significant foreign shareholdings¹⁶ may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

¹⁶ For the purposes of this entry, the term "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting shares in CSL.

26 Sector:	Tourism and Travel-related Services
Obligations Concerned:	Local Presence (Article 9.6)
Level of Government:	Regional
Source of Measure:	<i>Travel Agents Act 1988</i> (Qld) <i>Travel Agents Act 1985</i> (WA) <i>Travel Agents Regulations 1986</i> (WA)
Description:	<u>Queensland</u> In order to obtain a licence to operate as a travel agent, a person must have a business address in Queensland. <u>Western Australia</u> To carry on business in Western Australia as a travel agent, a person must have a principal place of business in the state.

27 Sector:	Recreational, Cultural and Sporting Services
Obligations Concerned:	Local Presence (Article 9.6)
Level of Government:	Regional
Source of Measure:	<i>Nature Conservation Act 1992 (Qld)</i> <i>Nature Conservation (Wildlife Management) Regulation 2006 (Qld)</i> <i>Nature Conservation (Administration) Regulation 2006 (Qld)</i> Nature Conservation (Protected Plants) Conservation Plan 2000 (Qld)
Description:	<u>Queensland</u> The Chief Executive of the Queensland Department of Environment and Heritage Protection may grant a wildlife authority, ¹⁷ other than a wildlife movement permit, to a corporation only if the corporation has an office in the State. The chief executive may approve a person to be an authorised cultivator or propagator for protected plants only if: (a) in the case of a natural person, the person is a resident of the State; or (b) if the person is a corporation, the corporation has premises in the State at which the plants are to be cultivated or propagated.

¹⁷ This term is defined in Schedule 7 of the *Nature Conservation (Administration) Regulation 2006 (Qld)*.

An individual or corporation is only taken to be a "person aggrieved" by a decision, failure to make a decision or conduct under the Act if the individual is an Australian citizen or ordinarily resident in Australia or, if a corporation, established in Australia.

28 Sector:	Transport Services
Type of Reservation:	National Treatment Local Presence (Article 9.6)
Level of Government:	Central
Source of Measure:	<i>Competition and Consumer Act 2010</i> (Cth)
Description:	<p>Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.</p> <p>Only a person¹⁸ affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of 'reasonable' include Australia's national interest and the interests of Australian shippers.</p>

¹⁸ For the purposes of this entry, sections 10.48 and 10.58 of Part X of the *Competition and Consumer Act 2010* list the categories of persons to whom this reservation will apply.

29 Sector: Transport Services

Obligations Concerned: Market Access (Article 9.3)
National Treatment
Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central

Source of Measure: *Air Navigation Act 1920* (Cth)
Ministerial Statements

Description: Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore, it is required that:

- (a) at least two-thirds of the board members must be Australian citizens;
- (b) the chairperson of the board must be an Australian citizen;
- (c) the airline's head office must be in Australia; and
- (d) the airline's operational base must be in Australia.

30 Sector: Transport Services

Obligations Concerned: Market Access (Article 9.3)
National Treatment
Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central

Source of Measure: *Qantas Sale Act 1992* (Cth)

Description: Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent in aggregate, with individual foreign holdings limited to 25 per cent and aggregate holdings by foreign airlines to 35 per cent. In addition:

- (a) the head office of Qantas must always be located in Australia;
- (b) the majority of Qantas' operational facilities must be located in Australia;
- (c) at all times, at least two-thirds of the directors of Qantas must be Australian citizens;
- (d) at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and
- (e) Qantas is prohibited from taking any action to become incorporated outside Australia.

31 Sector:	Transport Services
Obligations Concerned:	National Treatment Local Presence (Article 9.6)
Level of Government:	Regional
Source of Measure:	<i>Commercial Passenger (Road Transport) Act (NT)</i> <i>Road Transport (Public Passenger Services) Regulations 2002 (ACT)</i>
Description:	<u>Northern Territory</u> A taxi licence will be cancelled where the holder, being an individual, has not been ordinarily resident in the Northern Territory for more than 6 months or, being a body corporate, has ceased for more than 6 months to have its principal place of business in the Northern Territory. <u>Australian Capital Territory</u> An application for accreditation to run a public transport service must be made by an Australian citizen or permanent resident of Australia.

Section 3

32 Sector:	Financial Services
Obligations Concerned:	National Treatment Market Access (Article 9.3)
Level of Government	Central
Source of Measure:	<i>Banking Act 1959 (Cth)</i> <i>Banking Amendment Regulations 2000 (No. 1)</i> <i>Payment Systems (Regulation) Act 1998 (Cth)</i>
Description:	<p>To undertake banking business in Australia an entity must be a body corporate and authorised by the Australian Prudential Regulation Authority (APRA) as an authorised deposit-taking institution (ADI).</p> <p>Foreign deposit-taking institutions (including foreign banks) may only operate a banking business in Australia through locally incorporated deposit-taking subsidiaries or authorised branches (foreign ADIs), or through both structures.</p> <p>A foreign ADI is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than 250,000 Australian Dollars.</p> <p>A foreign deposit-taking institution that operates a representative office in Australia is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.</p>

Foreign banks located overseas may only raise funds in Australia through the issue of debt securities provided those securities are offered/traded in parcels of not less than 500,000 Australian Dollars and the securities and any associated information memoranda clearly state the issuing bank is not authorised under the *Banking Act 1959* in Australia.

33 Sector:	Financial Services
Obligations Concerned:	National Treatment
Level of Government	Central
Source of Measure:	<i>Commonwealth Banks Act 1959</i> (Cth)
Description:	Liabilities of the Commonwealth Bank, previously Commonwealth Government- owned, are covered by transitional guarantee arrangements.

34	Sector:	Financial Services
	Obligations Concerned:	Local Presence (Article 9.6)
	Level of Government	Regional
	Source of Measure:	<i>Credit (Administration) Act 1984 (WA)</i> <i>Credit (Administration) Regulations 1985 (WA)</i> <i>Debt Collectors Licensing Act 1964 (WA)</i> <i>Debt Collectors Licensing Regulations 1964 (WA)</i> <i>Finance Brokers Control Act 1975 (WA)</i> <i>Finance Brokers (General) Regulations 1977 (WA)</i>
	Description:	<u>Western Australia</u> A natural person (whether alone or in partnership with other persons) or an incorporated body seeking to carry on a business of providing credit in Western Australia (including where the provision of the credit is connected with the carrying on of another business), must have a principal office in Australia and a principal place of business in Western Australia. Any person (including an incorporated body) seeking to exercise or carry on the business or any functions of a debt collector in Western Australia, must have a principal place of business in the State. A natural person seeking to carry on business as a finance broker in Western Australia must be ordinarily resident in Western Australia. A finance broker must have a registered office in Western Australia while carrying on business as a broker.

35 Sector: Financial Services

Obligations concerned: Local Presence (Article 9.6)

Level of Government: Regional

Source of Measure: *Second-hand Dealers and Pawnbrokers Act 2003 (Qld)*

Description: Queensland

A person operating as a second-hand dealer or as a pawnbroker must have a principal place of business in Queensland where a document can be served personally. A post office box does not suffice.

PART 2
SCHEDULE OF JAPAN

Section 1
Notes for Section 2

1. Section 2 of the Schedule of Japan sets out, in accordance with Articles 9.7 (Trade in Services - Non-Conforming Measures) and 14.10 (Investment - Non-Conforming Measures and Exceptions), the reservations taken by Japan with respect to existing measures that do not conform with obligations imposed by:

- (a) Article 9.3 (Trade in Services - Market Access);
- (b) Article 9.4 (Trade in Services - National Treatment) or 14.3 (Investment - National Treatment);
- (c) Article 9.5 (Trade in Services - Most-Favoured-Nation Treatment) or 14.4 (Investment - Most-Favoured-Nation Treatment);
- (d) Article 9.6 (Trade in Services - Local Presence);
- (e) Article 14.8 (Investment - Senior Management and Boards of Directors); or
- (f) Article 14.9 (Investment - Prohibition of Performance Requirements).

2. Each reservation sets out the following elements:

- (a) "Sector" refers to the general sector in which the reservation is taken;
- (b) "Sub-Sector" refers to the specific sector in which the reservation is taken;
- (c) "Industry Classification" refers, where applicable, and only for transparency purposes, to the activity covered by the reservation according to domestic or international industry classification codes;
- (d) "Type of Reservation" specifies the obligations

referred to in paragraph 1 for which the reservation is taken;

- (e) "Level of Government" indicates the level of government maintaining the measure for which the reservation is taken;
- (f) "Measures" identifies the existing laws, regulations or other measures for which the reservation is taken. A measure cited in the "Measures" element:
 - (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and
- (g) "Description" sets out, with regard to the obligations referred to in paragraph 1, the non-conforming aspects of the existing measures for which the reservation is taken.

3. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of the relevant provisions of the Chapters against which the reservation is taken, and the "Measures" element shall prevail over all the other elements.

4. With respect to financial services:

- (a) for prudential reasons within the context of Article 11.4 (Financial Services - Domestic Regulation), Japan shall not be prevented from taking measures such as non-discriminatory limitations on juridical forms of a commercial presence. For the same reasons, Japan shall not be prevented from applying non-discriminatory limitations concerning admission to the market of new financial services which shall be consistent with a regulatory framework aimed at achieving such prudential objectives. In this context, securities firms are allowed to deal in securities defined in the relevant laws of Japan,

and banks are not allowed to deal in those securities unless allowed in accordance with those laws.

- (b) services supplied in the Area of Australia to the service consumer in Japan without any active marketing from the service supplier are considered as services supplied under subparagraph (n)(ii) of Article 9.2 (Trade in Services - Definitions).

5. With respect to air transport services, measures affecting traffic rights or measures affecting services directly related to the exercise of traffic rights are not listed in this Schedule, as these are excluded from the scope of Chapter 9 (Trade in Services) pursuant to subparagraph 2(a) of Article 9.1 (Trade in Services - Scope).

6. Laws and regulations with regard to spectrum availability affecting obligations under Article 9.3 (Trade in Services - Market Access) are not included in this Schedule, taking into account the Attachment 6 of Guidelines for the Scheduling of Specific Commitments (WTO Document S/L/92, dated 28 March 2001).

7. For the purposes of this Part, the term "JSIC" means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised on 6 November 2007.

Section 2

1 Sector: Agriculture, Forestry and Fisheries, and Related Services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in reservation No.12 in Part 2 (the Schedule of Japan) in Annex 7)

Sub-Sector:

Industry Classification: JSIC 01 Agriculture
JSIC 02 Forestry
JSIC 03 Fisheries, except aquaculture
JSIC 04 Aquaculture
JSIC 6324 Agricultural cooperatives
JSIC 6325 Fishery and fishery processing cooperatives
JSIC 871 Agriculture, forestry and fisheries cooperative associations, n.e.c.

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27
Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment
The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in Japan in agriculture, forestry and fisheries, and related services (except fisheries within the

territorial sea, internal waters,
exclusive economic zone and
continental shelf provided for in the
reservation No.12 in Part 2 (the
Schedule of Japan) in Annex 7).

2 Sector: Automobile Maintenance Business

Sub-Sector: Motor Vehicle Disassembling Repair Business

Industry Classification: JSIC 89 Automobile maintenance services

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Road Vehicle Law (Law No. 185 of 1951), Chapter 6

Description: Trade in Services

A person who intends to conduct motor vehicle disassembling repair businesses is required to establish a workplace in Japan and to obtain an approval of the Director-General of the District Transport Bureau having jurisdiction over the district where the workplace is located.

3 Sector: Business Services

Sub-Sector:

Industry Classification: JSIC 9111 Employment services
 JSIC 9121 Worker dispatching services

Type of Reservation: Market Access (Article 9.3)
 Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Employment Security Law (Law No. 141 of 1947), Chapters 3 and 3-3

Law Concerning Securing the Proper Operation of Worker Dispatching Undertakings and Protecting Dispatched Workers (Law No. 88 of 1985), Chapter 2

Port Labour Law (Law No. 40 of 1988), Chapter 4

Mariner's Employment Security Law (Law No. 130 of 1948), Chapter 3

Law Concerning the Improvement of Employment of Construction Workers (Law No. 33 of 1976), Chapters 5 and 6

Description: Trade in Services

A person who intends to supply the following services for enterprises in Japan is required to have an establishment in Japan and to obtain permission from, or to submit notification to, the competent authority, as applicable:

- (a) private job placement services including fee-charging job placement services for construction workers; or
- (b) worker dispatching services including stevedore dispatching services, mariner dispatching services and work

opportunities securing
services for construction
workers.

Labour supply services may be
supplied only by a labour union which
has obtained permission from the
competent authority pursuant to the
Employment Security Law or Mariner's
Employment Security Law.

4 Sector: Collection Agency Services

Sub-Sector:

Industry Classification: JSIC 6619 Miscellaneous financial auxiliaries

JSIC 7299 Professional services, n.e.c.

Type of Reservation: Market Access (Article 9.3)

Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Special Measures Law Concerning Credit Management and Collection Business (Law No. 126 of 1998), Articles 3 and 4

Attorney Law (Law No. 205 of 1949), Articles 72 and 73

Description: Trade in Services

A person who intends to supply collection agency services which constitute the practice of law in respect of legal cases is required to be qualified as a lawyer under the laws and regulations of Japan ("Bengoshi"), a legal professional corporation under the laws and regulations of Japan ("Bengoshi-hojin") or an enterprise established under the Special Measures Law Concerning Credit Management and Collection Business and to establish an office in Japan.

No person may take over and recover other person's credits as business except an enterprise established under the Special Measures Law Concerning Credit Management and Collection Business that handles credits pursuant to provisions of that Law.

5 Sector: Construction

Sub-Sector:

Industry Classification: JSIC 06 Construction work, general, including public and private construction work

JSIC 07 Construction work by specialist contractor, except equipment installation work

JSIC 08 Equipment installation work

Type of Reservation: Market Access (Article 9.3)

Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Construction Business Law (Law No. 100 of 1949), Chapter 2

Law Concerning Recycling of Construction Materials (Law No. 104 of 2000), Chapter 5

Description: Trade in Services

1. A person who intends to conduct construction business is required to establish a place of business in Japan and to obtain permission from the Minister of Land, Infrastructure, Transport and Tourism or from the prefectural governor having jurisdiction over the district where the place of business is located.

2. A person who intends to conduct demolition work business is required to establish a place of business in Japan and to be registered with the prefectural governor having jurisdiction over the district where the place of business is located.

6 Sector: Distribution Services

Sub-Sector: Wholesale Trade Services, Retailing Services, Commission Agents' Services, Related to Alcoholic Beverages

Industry Classification: JSIC 5222 Liquors
JSIC 5851 Liquor stores

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Liquor Tax Law (Law No. 6 of 1953), Articles 9, 10 and 11

Description: Trade in Services

The number of licences conferred to service suppliers in those sub-sectors may be limited.

7 Sector: Distribution Services

Sub-Sector: Wholesale Trade Services supplied at
Public Wholesale Market

Industry Classification: JSIC 521 Agricultural, animal and
poultry farm and aquatic
products

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Wholesale Market Law (Law No. 35 of
1971), Articles 15, 17 and 33

Description: Trade in Services

The number of licences conferred to
wholesale trade service suppliers at
public wholesale markets may be
limited.

8 Sector: Education, Learning Support

Sub-Sector: Higher Educational Services

Industry Classification: JSIC 816 Institution of higher education

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Fundamental Law of Education (Law No. 120 of 2006), Article 6
School Education Law (Law No. 26 of 1947), Article 2
Private School Law (Law No. 270 of 1949), Article 3

Description: Trade in Services

Higher educational services supplied as formal education in Japan must be supplied by formal education institutions. Formal education institutions must be established by school juridical persons.

The term "formal education institutions" means elementary schools, lower secondary schools, secondary schools, upper secondary schools, universities, junior colleges, colleges of technology, special support schools and kindergartens.

The term "school juridical person" means a non-profit juridical person established for the purposes of supplying educational services under the law of Japan.

9 Sector: Financial Services

Sub-Sector: Banking and Other Financial Services
(excluding Insurance and
Insurance-Related Services)

Industry
Classification: JSIC 622 Banks, except central bank
JSIC 631 Financial institutions for
small-businesses

Type of
Reservation: National Treatment (Articles 9.4 and
14.3)

Level of
Government: Central Government

Measures: Deposit Insurance Law (Law No. 34 of
1971), Article 2

Description: Trade in Services and Investment

The deposit insurance system does not
cover deposits taken by branches of
foreign banks.

10 Sector: Financial Services

Sub-Sector: Insurance and Insurance-Related Services

Industry Classification: JSIC 672 Non-life insurance institutions
 JSIC 6742 Non-life insurance agents and brokers

Type of Reservation: Market Access (Article 9.3)
 Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Insurance Business Law (Law No. 105 of 1995), Articles 185, 186, 275, 276, 277, 286 and 287
 Cabinet Order for Enforcement of Insurance Business Law (Cabinet Order No. 425 of 1995), Articles 19 and 39-2
 Ministerial Ordinance for Enforcement of Insurance Business Law (Ministerial Ordinance of the Ministry of Finance No. 5 of 1996), Articles 116 and 212-6

Description: Trade in Services

Commercial presence is in principle required for insurance contracts on the following items and any liability arising therefrom:

- (a) goods being transported within Japan; and
- (b) ships of Japanese registration which are not used for international maritime transport.

11 Sector: Heat Supply

Sub-Sector:

Industry Classification: JSIC 3511 Heat supply

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the heat supply industry in Japan.

12 Sector: Information and Communications

Sub-Sector: Telecommunications

Industry Classification: JSIC 3700 Head offices primarily engaged in managerial operations

JSIC 3711 Regional telecommunications, except wired broadcast telephones

JSIC 3731 Services incidental to telecommunications

Type of Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and 14.3)

Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Law Concerning Nippon Telegraph and Telephone Corporation, etc. (Law No. 85 of 1984), Articles 6 and 10

Description: Trade in Services and Investment

1. Nippon Telegraph and Telephone Corporation may not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly and/or indirectly held by the persons set forth in subparagraphs (a) through (c) reaches or exceeds one third:

- (a) a natural person who does not have Japanese nationality;
- (b) a foreign government or its representative; and
- (c) a foreign legal person or a foreign entity.

2. Any natural person who does not

have Japanese nationality may not assume the office of director or auditor of Nippon Telegraph and Telephone Corporation, Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation.

13 Sector: Information and Communications

Sub-Sector: Telecommunications and Internet Based Services

Industry Classification: JSIC 3711 Regional telecommunications, except wired broadcast telephones

JSIC 3712 Long-distance telecommunications

JSIC 3719 Miscellaneous fixed telecommunications

JSIC 3721 Mobile telecommunications

JSIC 401 Internet based services

Note: The activities covered by the reservation under JSIC 3711, 3712, 3719, 3721 or 401 are limited to the activities which are subject to the registration obligation under Article 9 of the Telecommunications Business Law (Law No. 86 of 1984).

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in telecommunications business and internet based services in Japan.

14 Sector: Manufacturing

Sub-Sector: Shipbuilding and Repairing, and Marine Engines

Industry Classification: JSIC 3131 Shipbuilding and repairing

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Shipbuilding Law (Law No. 129 of 1950), Articles 2, 3 and 3-2

Description: Trade in Services

A person who intends to establish or extend docks, which can be used to manufacture or repair vessels of 500 gross tonnage or more and/or 50 metres in length or more, is required to obtain permission from the Minister of Land, Infrastructure, Transport and Tourism. The issuance of a licence is subject to the requirements of an economic needs test.

15 Sector: Manufacturing

Sub-Sector: Drugs and Medicines Manufacturing

Industry Classification: JSIC 1653 Biological preparations

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the biological preparations manufacturing industry in Japan. For greater certainty, "biological preparations manufacturing industry" deals with economic activities in establishment which mainly produces vaccine, serum, toxoid, antitoxin and some preparations similar to the aforementioned products, or blood products.

16 Sector: Manufacturing

Sub-Sector: Leather and Leather Products
Manufacturing

Industry Classification: JSIC 1189 Textile apparel and accessories, n.e.c.

JSIC 1694 Gelatine and adhesives

JSIC 192 Rubber and plastic footwear and its findings

JSIC 2011 Leather tanning and finishing

JSIC 2021 Mechanical leather products, except gloves and mittens

JSIC 2031 Cut stock and findings for boots and shoes

JSIC 2041 Leather footwear

JSIC 2051 Leather gloves and mittens

JSIC 2061 Baggage

JSIC 207 Handbags and small leather cases

JSIC 2081 Fur skins

JSIC 2099 Miscellaneous leather products

JSIC 3253 Sporting and athletic goods

Note 1: The activities covered by the reservation under JSIC 1189 or 3253 are limited to the activities related to leather and leather products manufacturing.

Note 2: The activities covered by the reservation under JSIC 1694 are limited to the activities related to animal glue (nikawa) and gelatine manufacturing.

Type of Reservation:	National Treatment (Articles 9.4 and 14.3)
Level of Government:	Central Government
Measures:	Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3
Description:	Trade in Services and Investment The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the leather and leather products manufacturing industry in Japan.

17 Sector: Matters Related to the Nationality of a Ship

Sub-Sector:

Industry Classification:

Type of Reservation: Market Access (Article 9.3)
National Treatment (Articles 9.4 and 14.3)
Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Ship Law (Law No. 46 of 1899), Article 1

Description: Trade in Services and Investment

Nationality requirement applies to the supply of international maritime transport services (including services of passenger transportation and freight transportation) through establishment of a registered company operating a fleet flying the flag of Japan.

The term "nationality requirement" means that the ship must be owned by a Japanese national, or a company established under the laws and regulations of Japan, of which all the representatives and not less than two-thirds of the executives administering the affairs are Japanese nationals.

18 Sector: Measuring Services

Sub-Sector:

Industry Classification: JSIC 7441 Commodity inspection service
 JSIC 745 Surveyor certification

Type of Reservation: Market Access (Article 9.3)
 Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Measurement Law (Law No. 51 of 1992),
 Chapters 3, 5, 6 and 8

Regulations on Measurement Law
 (Ministerial Ordinance of the Ministry
 of International Trade and Industry
 No. 69 of 1993)

Ministerial Ordinance for Designated
 Inspection Body, Designated
 Verification Body, Designated
 Measurement Certification Inspection
 Body and Specified Measurement
 Certification Accreditation Body
 (Ministerial Ordinance of the Ministry
 of International Trade and Industry
 No. 72 of 1993)

Description: Trade in Services

1. A person who intends to supply
 services of conducting the periodic
 inspection of specified measuring
 instruments is required to establish a
 legal person in Japan and to be
 designated by the prefectural governor
 having jurisdiction over the district
 where the person intends to conduct
 such inspection, or by the head of a
 specified municipality in case the
 place where the person intends to
 conduct such inspection is located
 within the district of such specified
 municipality.

2. A person who intends to supply
 services of conducting the
 verification of specified measuring

instruments is required to establish a legal person in Japan and to be designated by the Minister of Economy, Trade and Industry.

3. A person who intends to conduct measurement certification business, including specified measurement certification business, is required to have an establishment in Japan and to be registered with the prefectural governor having jurisdiction over the district where the establishment is located.

4. A person who intends to supply services of conducting the inspection of specified measuring instruments used for the measurement certification is required to establish a legal person in Japan and to be designated by the prefectural governor having jurisdiction over the district where the person intends to conduct such inspection.

5. A person who intends to supply services of conducting the accreditation for a person engaged in specified measurement certification business is required to establish a legal person in Japan, and to be designated by the Minister of Economy, Trade and Industry.

6. A person who intends to supply services of conducting the calibration of measuring instruments is required to establish a legal person in Japan and to be designated by the Minister of Economy, Trade and Industry.

19 Sector: Medical, Health Care and Welfare

Sub-Sector:

Industry Classification: JSIC 8599 Miscellaneous social insurance, social welfare and care services

Type of reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Law Concerning Collection of Labour Insurance Premium (Law No. 84 of 1969), Chapter 4
Enforcement Regulations for the Law Concerning Collection of Labour Insurance Premium (Ministerial Ordinance of the Ministry of Labour No. 8 of 1972)

Description: Trade in Services
Only an association of business proprietors or a federation of such associations approved by the Minister of Health, Labour and Welfare under the laws and regulations of Japan may conduct labour insurance businesses entrusted by business proprietors. An association which intends to conduct such labour insurance businesses under the laws and regulations of Japan is required to establish an office in Japan, and to obtain the approval of the Minister of Health, Labour and Welfare.

20 Sector:	Mining
Sub-Sector:	
Industry Classification:	JSIC 05 Mining and quarrying of stone and gravel
Type of Reservation:	Market Access (Article 9.3)
	National Treatment (Articles 9.4 and 14.3)
	Local Presence (Article 9.6)
Level of Government:	Central Government
Measures:	Mining Law (Law No. 289 of 1950), Chapters 2 and 3
Description:	Trade in Services and Investment
	Only a Japanese national or an enterprise of Japan may have mining rights or mining lease rights.

21 Sector: Oil Industry

Sub-Sector:

Industry Classification: JSIC 053 Crude petroleum and natural gas production

JSIC 1711 Petroleum refining

JSIC 1721 Lubricating oils and greases (not made in petroleum refineries)

JSIC 1741 Paving materials

JSIC 1799 Miscellaneous petroleum and coal products

JSIC 4711 Ordinary warehousing

JSIC 4721 Refrigerated warehousing

JSIC 5331 Petroleum

JSIC 6051 Petrol stations (gasoline service stations)

JSIC 6052 Fuel stores, except gasoline service stations

JSIC 9299 Miscellaneous business services, n.e.c.

Note 1: The activities covered by the reservation under JSIC 1741, 1799, 4711, 4721 or 6052 are limited to those related to the oil industry.

Note 2: The activities covered by the reservation under JSIC 9299 are limited to those related to the liquefied petroleum gas industry.

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct
Investment (Cabinet Order No. 261 of
1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the oil industry in Japan. All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the oil industry. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law is not required for investments in the manufacture of these products.

22 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7211 Lawyers' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Attorney Law (Law No. 205 of 1949),
Chapters 3, 4, 4-2, 5 and 9

Description: Trade in Services

A natural person who intends to supply legal services is required to be qualified as a lawyer under the laws and regulations of Japan ("Bengoshi") and to establish an office within the district of the local bar association to which the natural person belongs.

An enterprise which intends to supply legal services is required to establish a legal professional corporation under the laws and regulations of Japan ("Bengoshi-Hojin").

23 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7211 Lawyers' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Law on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (Law No. 66 of 1986), Chapters 2 and 4

Description: Trade in Services

A natural person who intends to supply legal advisory services concerning foreign laws is required to be qualified as a registered foreign lawyer under the laws and regulations of Japan ("Gaikoku-Ho-Jimu-Bengoshi") and to establish an office within the district of the local bar association to which the natural person belongs.

A registered foreign lawyer under the laws and regulations of Japan is required to stay in Japan for not less than 180 days per year.

24 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7212 Patent attorneys' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Patent Attorney Law (Law No. 49 of 2000), Chapters 3, 6 and 8

Description: Trade in Services

A natural person who intends to supply patent attorney services is required to be qualified as a patent attorney under the laws and regulations of Japan ("Benrishi").

An enterprise which intends to supply patent attorney services is required to establish a patent business corporation under the laws and regulations of Japan ("Tokkyo-Gyomu-Hojin").

25 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7221 Notaries public's and
judicial scriveners' offices

Type of Reservation: Market Access (Article 9.3)
National Treatment (Article 9.4)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Notary Law (Law No. 53 of 1908),
Chapters 2 and 3

Description: Trade in Services

Only a Japanese national may be appointed as a notary in Japan.

The notary is required to establish an office in the place designated by the Minister of Justice.

26 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7221 Notaries public's and
judicial scriveners' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Judicial Scrivener Law (Law No. 197 of
1950), Chapters 3, 4, 5, 7 and 10

Description: Trade in Services

A natural person who intends to supply judicial scrivener services is required to be qualified as a judicial scrivener under the laws and regulations of Japan ("Shiho-Shoshi") and to establish an office within the district of the judicial scrivener association to which the natural person belongs.

An enterprise which intends to supply judicial scrivener services is required to establish a judicial scrivener corporation under the laws and regulations of Japan ("Shiho-Shoshi-Hojin").

27 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7241 Certified public accountants' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Certified Public Accountant Law (Law No. 103 of 1948), Chapters 3, 5-2 and 7

Description: Trade in Services

A natural person who intends to supply certified public accountants services is required to be qualified as a certified public accountant under the laws and regulations of Japan ("Koninkaikeishi").

An enterprise which intends to supply certified public accountants services is required to establish an audit corporation under the laws and regulations of Japan ("Kansa-Hojin").

28 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7242 Auditors' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Certified Public Tax Accountant Law (Law No. 237 of 1951), Chapters 3, 4, 5-2, 6 and 7
Enforcement Regulation on Certified Public Tax Accountant Law (Ministerial Ordinance of the Ministry of Finance No. 55 of 1951)

Description: Trade in Services

A natural person who intends to supply certified public tax accountant services is required to be qualified as a certified public tax accountant under the laws and regulations of Japan ("Zeirishi") and to establish an office within the district of certified public tax accountant association to which the natural person belongs.

An enterprise which intends to supply certified public tax accountant services is required to establish a certified public tax accountant corporation under the laws and regulations of Japan ("Zeirishi-Hojin").

29 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7231 Administrative scriveners' offices

JSIC 7294 Certified real estate appraisers

JSIC 7299 Professional services, n.e.c.

JSIC 7421 Architectural design services

Type of Reservation: Market Access (Article 9.3)

Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Architect and/or Building Engineer Law (Law No. 202 of 1950), Chapters 1, 2 and 6

Description: Trade in Services

An architect and/or building engineer, qualified as such under the laws and regulations of Japan ("Kenchikushi"), or a person employing such an architect and/or building engineer, who intends to conduct business of design, superintendence of construction work, administrative work related to construction work contracts, supervision of building construction work, survey and evaluation of buildings, and representation in procedure under the laws and regulations concerning construction, upon request from others for remuneration, is required to establish an office in Japan.

30 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7251 Certified social insurance and labour consultants' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Certified Social Insurance and Labour Consultant Law (Law No. 89 of 1968), Chapters 2-2, 4-2, 4-3 and 5

Description: Trade in Services

A natural person who intends to supply social insurance and labour consultant services is required to be qualified as a certified social insurance and labour consultant under the laws and regulations of Japan ("Shakai-Hoken-Romushi") and to establish an office in Japan.

An enterprise which intends to supply social insurance and labour consultant services is required to establish a certified social insurance and labour consultant corporation under the laws and regulations of Japan ("Shakai-Hoken-Roumushi-Hojin").

31 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7231 Administrative scriveners' office

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Administrative Scrivener Law (Law No. 4 of 1951), Chapters 3, 4, 5 and 8

Description: Trade in Services

A natural person who intends to supply administrative scrivener services is required to be qualified as an administrative scrivener under the laws and regulations of Japan ("Gyousei-Shoshi") and to establish an office within the district of the administrative scrivener association to which the natural person belongs.

An enterprise which intends to supply administrative scrivener services is required to establish an administrative scrivener corporation under the laws and regulations of Japan ("Gyousei-Shoshi-Hojin").

32 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7299 Professional services
n.e.c.

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Maritime Procedure Agents Law (Law No. 32 of 1951), Article 17

Description: Trade in Services

Maritime procedure agent services must be supplied by a natural person who is qualified as a maritime procedure agent under the laws and regulations of Japan ("Kaijidairishi").

33 Sector: Professional Services

Sub-Sector:

Industry Classification: JSIC 7222 Land and house surveyors' offices

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Land and House Surveyor Law (Law No. 228 of 1950), Chapters 3, 4, 5, 7 and 10

Description: Trade in Services

A natural person who intends to supply land and house surveyor services is required to be qualified as a land and house surveyor under the laws and regulations of Japan ("Tochi-Kaoku-Chosashi") and to establish an office within the district of the land and house surveyor association to which the natural person belongs.

An enterprise which intends to supply land and house surveyor services is required to establish a land and house surveyor corporation under the laws and regulations of Japan ("Tochi-Kaoku-Chosashi-Hojin").

34 Sector: Real Estate

Sub-Sector:

Industry Classification: JSIC 6811 Sales agents of buildings and houses

JSIC 6812 Land subdividers and developers

JSIC 6821 Real estate agents and brokers

JSIC 6941 Real estate managers

Type of Reservation: Market Access (Article 9.3)

Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Building Lots and Buildings Transaction Business Law (Law No. 176 of 1952), Chapter 2

Real Estate Syndication Law (Law No. 77 of 1994), Chapters 2 and 4-2

Law Concerning Improving Management of Condominiums (Law No. 149 of 2000), Chapter 3

Description: Trade in Services

1. A person who intends to conduct building lots and buildings transaction business is required to establish an office in Japan and to obtain a licence from the Minister of Land, Infrastructure, Transport and Tourism or from the prefectural governor having jurisdiction over the district where the office is located.

2. A person who intends to conduct real estate syndication business is required to establish an office in Japan, and to obtain permission from the competent Minister or from the prefectural governor having jurisdiction over the district where the office is located or to submit

notification to the competent
Minister.

3. A person who intends to conduct
condominiums management business is
required to establish an office in
Japan and to be registered in the list
maintained by the Ministry of Land,
Infrastructure, Transport and Tourism.

35 Sector: Real Estate Appraisal Services

Sub-Sector:

Industry Classification: JSIC 7294 Certified real estate appraisers

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Law Concerning the Appraisal of Real Estate (Law No. 152 of 1963), Chapter 3

Description: Trade in Services

A person who intends to supply real estate appraisal services is required to establish an office in Japan and to be registered in the list maintained by the Ministry of Land, Infrastructure, Transport and Tourism or the prefecture having jurisdiction over the district where the office is located.

36 Sector: Seafarers

Sub-Sector:

Industry Classification: JSIC 031 Marine fisheries
 JSIC 451 Oceangoing transport
 JSIC 452 Coastwise transport

Type of Reservation: Market Access (Article 9.3)
 National Treatment (Article 9.4)

Level of Government: Central Government

Measures: Mariners Law (Law No. 100 of 1947), Chapter 4

Official Notification of the Director General of Seafarers Department, Maritime Technology and Safety Bureau of the Ministry of Transport, No. 115, 1990

Official Notification of the Director General of Seafarers Department, Maritime Technology and Safety Bureau of the Ministry of Transport, No. 327, 1990

Official Notification of the Director General of Maritime Bureau of the Ministry of Land, Infrastructure and Transport, No. 153, 2004

Description: Trade in Services

Foreign nationals employed by Japanese enterprises except for the seafarers referred to in the relevant official notifications may not work on vessels flying the Japanese flag.

37 Sector: Security Guard Services

Sub-Sector:

Industry Classification: JSIC 923 Guard services

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in security guard services in Japan.

38 Sector: Services Related to Occupational Safety and Health

Sub-Sector:

Industry Classification: JSIC 7299 Professional services, n.e.c.

JSIC 7441 Commodity inspection services

JSIC 7452 Environmental surveying certification

JSIC 8222 Vocational guidance centers

Type of Reservation: Market Access (Article 9.3)

Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Industrial Safety and Health Law (Law No. 57 of 1972), Chapters 5 and 8

Ministerial Ordinance for Registration and Designation related to Industrial Safety and Health Law and Orders based on the Law (Ministerial Ordinance of the Ministry of Labour No. 44 of 1972)

Working Environment Measurement Law (Law No. 28 of 1975), Chapters 2 and 3

Enforcement Regulation of the Working Environment Measurement Law (Ministerial Ordinance of the Ministry of Labour No. 20 of 1975)

Description: Trade in Services

A person who intends to supply inspection or verification services for working machines, skill training courses and other related services in connection with occupational safety and health, or working environment measurement services is required to be resident or to establish an office in Japan, and to be registered with the Minister of Health, Labour and Welfare or Director-General of the Prefectural

Labour Bureau.

39 Sector: Surveying Services

Sub-Sector:

Industry Classification: JSIC 7422 Surveying services

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Survey Law (Law No. 188 of 1949),
Chapter 6

Description: Trade in Services

A person who intends to supply surveying services is required to establish a place of business in Japan and to be registered with the Minister of Land, Infrastructure, Transport and Tourism.

40 Sector: Transport

Sub-Sector: Air Transport

Industry Classification: JSIC 4600 Head office primarily engaged in managerial operations

JSIC 4611 Air transport

Type of Reservation: National Treatment (Article 14.3)

Most-Favoured-Nation Treatment (Article 14.4)

Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8

Description: Investment

1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in air transport businesses in Japan.

2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting air transport businesses as a Japanese air carrier is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its

equivalent;

- (c) a legal person or other entity constituted under the laws of any foreign country; and
- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of voting rights are held by natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event an air carrier falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies such as holding companies, which have substantial control over the air carriers.

3. A Japanese air carrier or a company having substantial control over such air carrier, such as a holding company, may reject the request from a natural person or an entity set forth in subparagraphs 2(a) through (c), who owns equity investments in such air carrier or company, to enter its name and address in the register of shareholders, in the event such air carrier or company falls into a legal person referred to in subparagraph 2(d) by accepting such request.

4. Foreign air carriers are required to obtain permission of the Minister of Land, Infrastructure, Transport and Tourism to conduct international air

transport businesses.

5. Permission of the Minister of Land, Infrastructure, Transport and Tourism is required for the use of foreign aircraft for air transportation of passengers or cargoes to and from Japan for remuneration.

6. A foreign aircraft may not be used for a flight between points within Japan.

41 Sector: Transport

Sub-Sector: Air Transport

Industry Classification: JSIC 4600 Head offices primarily engaged in managerial operations

JSIC 4621 Aircraft service, except air transport

Type of Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and 14.3)

Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Civil Aeronautics Law (Law No. 231 of 1952), Chapters 7 and 8

Description: Trade in Services and Investment

1. The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in aerial work business in Japan.

2. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting aerial work business is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

- (c) a legal person other entity constituted under the laws of any foreign country; and
- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event a person conducting aerial work business falls into a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies, such as holding companies, which have substantial control over the person conducting aerial work business.

3. A foreign aircraft may not be used for a flight between points within Japan.

42 Sector: Transport

Sub-Sector: Air Transport (Registration of Aircraft in the National Register)

Industry Classification:

Type of Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and 14.3)

Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Civil Aeronautics Law (Law No. 231 of 1952), Chapter 2

Description: Trade in Services and Investment

1. An aircraft owned by any of the following natural persons or entities may not be registered in the national register:

- (a) a natural person who does not have Japanese nationality;
- (b) a foreign country, or a foreign public entity or its equivalent;
- (c) a legal person or other entity constituted under the laws of any foreign country; and
- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or

(c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. A foreign aircraft may not be registered in the national register.

43 Sector:	Transport
Sub-Sector:	Customs Brokerage
Industry Classification:	JSIC 4899 Services incidental to transport, n.e.c.
Type of Reservation:	Market Access (Article 9.3) Local Presence (Article 9.6)
Level of Government:	Central Government
Measures:	Customs Brokerage Law (Law No. 122 of 1967), Chapter 2
Description:	Trade in Services A person who intends to conduct customs brokerage business is required to have a place of business in Japan and to obtain permission of the Director-General of Customs having jurisdiction over the district where the person intends to conduct customs brokerage business.

44 Sector: Transport

Sub-Sector: Freight Forwarding Business
(excluding freight forwarding
business using air transportation)

Industry
Classification: JSIC 4441 Collect-and-deliver freight
transport

JSIC 4821 Deliver freight transport,
except collect-and-deliver
freight transport

Type of
Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and
14.3)

Most-Favoured-Nation Treatment
(Articles 9.5 and 14.4)

Local Presence (Article 9.6)

Senior Management and Boards of
Directors (Article 14.8)

Level of
Government: Central Government

Measures: Freight Forwarding Business Law (Law
No. 82 of 1989), Chapters 2, 3 and 4

Enforcement Regulation of Freight
Forwarding Business Law (Ministerial
Ordinance of the Ministry of Transport
No. 20 of 1990)

Description: Trade in Services and Investment

1. The following natural persons or
entities are required to be registered
with, or to obtain permission or
approval of, the Minister of Land,
Infrastructure, Transport and Tourism
for conducting freight forwarding
business using international shipping.
Such registration shall be made, or
such permission or approval shall be
granted, on the basis of reciprocity:

(a) a natural person who does not
have Japanese nationality;

- (b) a foreign country, or a foreign public entity or its equivalent;
- (c) a legal person or other entity constituted under the laws of any foreign country; and
- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. A person who intends to conduct freight forwarding business is required to establish an office in Japan, and to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism.

45 Sector: Transport

Sub-Sector: Freight Forwarding Business (only freight forwarding business using air transportation)

Industry Classification: JSIC 4441 Collect-and-deliver freight transport

JSIC 4821 Deliver freight transport, except collect-and-deliver freight transport

Type of Reservation: National Treatment (Article 14.3)

Most-Favoured-Nation Treatment (Article 14.4)

Senior Management and Boards of Directors (Article 14.8)

Level of Government: Central Government

Measures: Freight Forwarding Business Law (Law No. 82 of 1989), Chapters 2, 3 and 4

Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of Ministry of Transport No. 20 of 1990)

Description: Investment

1. The following natural persons or entities may not conduct freight forwarding businesses using air transportation between points within Japan:

- (a) a natural person who does not have Japanese nationality;
- (b) a foreign country, or a foreign public entity or its equivalent;
- (c) a legal person or other entity constituted under the laws of any foreign country; and

- (d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2. The natural persons or entities referred to in subparagraphs 1(a) through (d) are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding businesses using international air transportation. Such registration shall be permitted, or such permission or approval shall be granted, on the basis of reciprocity.

46 Sector: Transport

Sub-Sector: Railway Transport

Industry Classification: JSIC 421 Railway transport
 JSIC 4851 Railway facilities services

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27
 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the railway transport industry in Japan. The manufacture of vehicles, parts and components for the railway transport industry is not included in the railway transport industry. Therefore, the prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

47 Sector: Transport

Sub-Sector: Road Passenger Transport

Industry Classification: JSIC 4311 Common omnibus operators

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the omnibus industry in Japan. The manufacture of vehicles, parts and components for the omnibus industry is not included in the omnibus industry. Therefore, the prior notification under the Foreign Exchange and Foreign Trade Law is not required for the investments in the manufacture of these products.

48 Sector: Transport

Sub-Sector: Road transport

Industry Classification: JSIC 431 Common omnibus operators
 JSIC 432 Common taxicab operators
 JSIC 433 Contracted omnibus operators
 JSIC 4391 Motor passenger transport (particularly-contracted)
 JSIC 441 Common motor trucking
 JSIC 442 Motor trucking (particularly-contracted)
 JSIC 443 Mini-sized vehicle freight transport

Type of Reservation: Market Access (Article 9.3)
 Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Road Transport Law (Law No. 183 of 1951), Chapter 2
 Special Measures Law Concerning the Proper Management and Revitalization of the Taxi Business in Specified and Semi-specified Regions (Law No. 64 of 2009) (hereinafter referred to in this reservation as "the Law"), Chapters 2 and 7
 Trucking Business Law (Law No. 83 of 1989), Chapter 2

Description: Trade in Services

1. A person who intends to conduct road passenger transport business or road freight transport business is required to establish a place of business in Japan, and to obtain permission of, or to submit notification to, the Minister of Land, Infrastructure, Transport and Tourism.

2. In respect of common taxicab operators business, the Minister of Land, Infrastructure, Transport and Tourism may not grant permission to a person who intends to conduct the businesses, or may not approve a modification of the business plan of such businesses in the "specified regions" and in the "semi-specified regions" designated by the Minister of Land, Infrastructure, Transport and Tourism. Such permission may be granted, or such modification of the business plan may be approved with respect to "semi-specified regions" when the standards set out in the Law are met, including those that the capacity of common taxicab operators businesses in that region does not exceed the volumes of the traffic demand.

Such designation would be made when the capacity of common taxicab transportation businesses in that region exceeds or is likely to exceed the volumes of traffic demand to the extent that it would become difficult to secure the safety of transportation and the benefits of passengers.

3. In respect of common motor trucking business or motor trucking business (particularly-contracted), the Minister of Land, Infrastructure, Transport and Tourism may not grant permission to a person who intends to conduct the businesses, or may not approve a modification of the business plan of such businesses, in the "emergency supply/demand adjustment area" designated by the Minister of Land, Infrastructure, Transport and Tourism. Such designation would be made when the capacity of common motor trucking businesses or motor trucking businesses (particularly-contracted) in that area has significantly exceeded the volumes of transportation demand to the extent that the operation of existing businesses would become difficult.

49 Sector: Transport

Sub-Sector: Services Incidental to Transport

Industry Classification: JSIC 4852 Fixed facilities for road transport

Type of Reservation: Market Access (Article 9.3)

Level of Government: Central Government

Measures: Road Transport Law (Law No. 183 of 1951), Chapter 4

Description: Trade in Services

A person who intends to conduct motorway businesses is required to obtain a licence from the Minister of Land, Infrastructure, Transport and Tourism. The issuance of a licence is subject to an economic needs test, such as whether the proposed motorway is appropriate in scale compared with the volume and nature of traffic demand in the proposed area.

50 Sector: Transport

Sub-Sector: Services Incidental to Transport

Industry
Classification:

Type of
Reservation: Market Access (Article 9.3)
National Treatment (Article 9.4)
Local Presence (Article 9.6)

Level of
Government: Central Government

Measures: Pilotage Law (Law No. 121 of 1949),
Chapters 2, 3 and 4

Description: Trade in Services

Only a Japanese national may become a pilot in Japan.

Pilots directing ships in the same pilotage district are required to establish a pilot association for the pilotage district.

51 Sector: Transport

Sub-Sector: Water Transport

Industry Classification: JSIC 451 Oceangoing transport

Type of Reservation: Market Access (Article 9.3)
National Treatment (Article 9.4)
Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central Government

Measures: Law Concerning Special Measures Against Unfavourable Treatment to Japanese Oceangoing Ship Operators by Foreign Government (Law No. 60 of 1977)

Description: Trade in Services

Australian oceangoing ship operators may be restricted or prohibited from entering ports in Japan or from loading and unloading cargoes in Japan in cases where Japanese oceangoing ship operators are prejudiced by Australia.

52 Sector: Transport

Sub-Sector: Water Transport

Industry Classification: JSIC 452 Coastwise transport
 JSIC 453 Inland water transport
 JSIC 4542 Coastwise ship leasing

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27
 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the water transport industry in Japan. For greater certainty, "water transport industry" refers to the oceangoing/seagoing transport, the coastwise transport (i.e. maritime transport between ports in Japan), the inland water transport and the ship leasing industry. However, the oceangoing/seagoing transport industry and the ship leasing industry excluding the coastwise ship leasing industry are exempted from the prior notification requirement.

53 Sector: Transport

Sub-Sector: Water Transport

Industry
Classification:

Type of
Reservation: Market Access (Article 9.3)

National Treatment (Articles 9.4 and
14.3)

Most-Favoured-Nation Treatment
(Articles 9.5 and 14.4)

Level of
Government: Central Government

Measures: Ship Law (Law No. 46 of 1899),
Article 3

Description: Trade in Services and Investment

Unless otherwise specified in the laws
and regulations of Japan, or
international agreements to which
Japan is a party, ships not flying the
Japanese flag are prohibited from
entering ports in Japan which are not
open to foreign commerce and from
carrying cargoes or passengers between
ports in Japan.

54 Sector: Vocational Skills Test

Sub-Sector:

Industry
Classification:

Type of Reservation: Market Access (Article 9.3)
Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Human Resources Development Promotion Law (Law No. 64 of 1969), Chapter 5

Description: Trade in Services

Some specific types of non-profit organization (the employers' organizations or federations thereof, general incorporated associations or general incorporated foundations, labour unions that are juridical persons, or other non-profit juridical persons) can supply the service. Any such organization which intends to carry out the vocational skills test for workers is required to establish an office in Japan and to be designated by the Minister of Health, Labour and Welfare.

55 Sector: Water Supply and Waterworks

Sub-Sector:

Industry Classification: JSIC 3611 Water for end users, except industrial users

Type of Reservation: National Treatment (Articles 9.4 and 14.3)

Level of Government: Central Government

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Trade in Services and Investment

The prior notification requirement under the Foreign Exchange and Foreign Trade Law applies to foreign investors who intend to make investments in the water supply and waterworks industry in Japan.

56 Sector: Wholesale and Retail Trade

Sub-Sector: Livestock

Industry Classification: JSIC 5219 Miscellaneous agricultural, animal and poultry farm and aquatic products

Type of Reservation: Local Presence (Article 9.6)

Level of Government: Central Government

Measures: Livestock Dealer Law (Law No. 208 of 1949), Article 3

Description: Trade in Services

A person who intends to conduct livestock trading business is required to be resident in Japan, and to obtain a licence from the prefectural governor having jurisdiction over the place of residence. For greater certainty, the term "livestock trading" means the trading or exchange of livestock, or the good offices for such trading or exchange.