

## Japan steps into Brexit debate with a message to the UK and the EU

By Anthony P. Raven and Tim Wright

*The Japanese government has stepped into the Brexit debate with an unprecedented warning to the EU and the UK, saying that Japanese inbound investment into the UK could be put at risk by Brexit particularly if withdrawal negotiations are carried out behind closed doors over a protracted period.*

### A Message to the United Kingdom and the European Union

In a [15-page statement](#) addressed to the people of the UK and the EU, Japan's Ministry of Foreign Affairs warns that Japanese businesses could relocate away from the UK if Brexit results in the UK losing many of its single-market privileges including so-called "passporting" rights. The report, which reflected a wish-list compiled by big Japanese companies across sectors such as automotive, banking and pharmaceutical that invest in the UK, is titled "Japan's message to the United Kingdom and the European Union." It explicitly warns of the consequences if its requirements are not met. Its key message, which was delivered so as to coincide with the start of the recent G20 Summit held in Hangzhou, China, is that "Japanese businesses with their European headquarters in the UK may decide to transfer their head-office function to Continental Europe if EU laws cease to be applicable in the UK after its withdrawal."

The report cites "the fact that a number of Japanese businesses ... have invested actively to the UK, which was seen to be a gateway to Europe, and have established value-chains across Europe" and "strongly request[s] that the UK will consider this fact seriously and respond in a responsible manner to minimise any harmful effects on these businesses."

The report is divided into general and specific requests and requirements:

#### General requests

- The Brexit negotiations should take place in a transparent manner, with regular disclosure of their status.
- Any transition should provide sufficient time to accommodate changes.
- Market integrity between the UK and the EU should be safeguarded "to the greatest extent possible."

- The free trade system should be maintained with an agreement in principle on the Japan-EU Free Trade Agreement to be reached by the end of 2016.

### Specific requests

Topics covered include maintaining:

- current tariffs and customs processes;
- the current level of information protection and the free transfer of data;
- freedom of establishment and financial services passporting; and
- free movement of capital, including between associated companies.

### Other requests cover:

- maintaining access by Japanese companies to UK and EU nationals (in particular protecting the status of those who are already employed or will be employed by Japanese businesses). In fact the report goes further and seeks relaxation of the UK's business immigration rules especially for intra-group employee transfers;
- maintaining harmonization regulations and standards between the UK and the EU such as established frameworks of mutual recognition and equivalence, and continued recognition of European Standards, CE marks (i.e. "European Conformity" product marking), REACH (the Regulation concerning the Registration, Evaluation, Authorization & restriction of Chemicals), RoHS (the Restriction of the Use of Certain Hazardous Substances (*RoHS*) in Electrical and Electronic Equipment (EEE) Directive), Good Manufacturing Practices and plant & animal quarantine and food safety standards;
- securing the City of London's euro clearing centre business; and
- keeping EU agencies such as the European Medicines Agency (EMA) located within the UK.

Many of these requests will likely prove particularly contentious with some EU countries jostling to win business and jobs as the UK withdraws from the EU. The EMA, for example, is widely expected to relocate from the UK, particularly if the UK does not join the EEA, with Sweden in particular lobbying hard. The Ministry's report makes a strong case for continuing the status quo: "Many Japanese pharmaceutical companies are operating in London, due to the EMA's location in London. If the EMA were to transfer to other EU Member States, the appeal of London as an environment for the development of pharmaceuticals would be lost, which could possibly lead to a shift in the flow of R&D funds and personnel to Continental Europe. This could force Japanese companies to reconsider their business activities."

On the subject of passporting, the report strikes a similar chord: "If Japanese financial institutions are unable to maintain the single passport obtained in the UK, they would face difficulties in their business operations in the EU and might have to acquire corporate status within the EU anew and obtain the passport again, or to relocate their operations from the UK to existing establishments in the EU."

### Concluding Remarks

With the UK government still seemingly in disarray as it returns from its summer break, and with Prime Minister May's underwhelming appearance at the G20, the lack of a plan for Brexit continues to cast

uncertainty for businesses, markets and governments around the world. Whilst Prime Minister May sticks to her “Brexit means Brexit” message, the fact is that the detail of what that will mean is no closer to being worked out. In fact, Brexit Secretary David Davis recently announced that a national consultation is to take place with as many firms and organizations as possible “aimed at securing the best negotiating position.”

Putting this intervention into economic context, according to the independent policy think tank Open Europe, in 2015 Japan was the UK’s 15<sup>th</sup> largest trading partner in terms of exports of goods and 8<sup>th</sup> largest in terms of exports of services (16<sup>th</sup> for imported goods and 11<sup>th</sup> for imported services) and accounted for four percent of total stock of international investment into the UK, making it the sixth largest single country in terms of investment into the UK. So, whilst UK officials are said to have “reacted with astonishment that Japan had chosen to publish this list of concerns and demands,” the fact that Japan has chosen to speak out and highlight the key issues concerning many other governments around the world should in fact be welcomed.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the attorneys below.

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