

Japan: Impact of the Economic Security Promotion Act on overseas businesses that provide services to Japanese companies designated as Essential Social Infrastructure Service Providers in Japan

In brief

It is anticipated that overseas businesses that supply or provide maintenance services for Specified Critical Facilities serving Japanese companies designated as Specified Essential Infrastructure Service Providers will be asked to provide certain information — including personal information regarding their officers and/or shareholders, etc. — and/or to enter into additional risk mitigation-related agreements. An understanding of the framework of the Act is therefore critical for these overseas businesses.

1. What is the Economic Security Promotion Act?

- a. The "Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures" ("**Act**") was enacted on 11 May 2022, promulgated a week later and has gradually started to enter into effect.
- b. The Act is intended to respond to the increasingly complex, ever-changing global geopolitical and economic landscape and the growing importance of preventing economic activities with the potential to harm the security of Japan and its citizens. It requires that the Japanese government formulate a basic policy and introduce comprehensive and effective economic measures to ensure national security.
- c. Specifically, the following four systems have been established to address urgent issues requiring legislative attention:
 - i. System for Ensuring a Stable Supply of Critical Products
 - ii. System for Ensuring Stable Provision of Essential Infrastructure Services
 - iii. System for Enhancing the Development of Specified Critical Technologies
 - iv. System Prohibiting Disclosure of Selected Patent Applications
- d. This client alert focuses on (b) above (the System for Ensuring Stable Provision of Essential Infrastructure Services), which went into effect in May this year.
- e. Overseas businesses that supply or provide maintenance services for Specified Critical Facilities (defined below; "**Facilities**") serving Japanese companies designated as Specified Essential Infrastructure Service Providers ("**Service Providers**") will need to understand the framework of the Act. It is anticipated that these overseas businesses will be asked to provide certain personal information regarding their officers and/or shareholders etc. and/or to enter into additional risk mitigation-related agreements.

2. Summary of the System for Ensuring Stable Provision of Specified Essential Infrastructure Services

- a. One of the purposes of the Act is to prevent the disruption of essential domestic infrastructure services by hostile foreign actors.
- b. The Act requires notification and review prior to the introduction of Facilities or the entrustment of "Critical Maintenance and/or Management, etc." ("**Maintenance**, etc.") of Facilities to third parties. Prior to the introduction of a Facility, information must be provided regarding the suppliers of the Facility and the suppliers of the components of the Facility ("**Component Facility**"). Before the entrustment of Maintenance, etc. of a Facility to a third party, information must be provided on the third party and its subcontractors to the relevant Japanese government ministry.
- c. Specifically, the Act requires a Service Provider to submit an introduction/entrustment plan to the competent Japanese government ministry. The relevant ministry will then review it in consultation with the Prime Minister's office and/or the relevant administrative organs if necessary. The Prime Minister's office and/or the relevant administrative organs will then offer their opinions to the competent ministry, and finally a recommendation or order will be issued to the Service

Provider. The review period is 30 days in general, but can be shortened or extended to a maximum of four months. The Service Provider is prohibited from introducing or entrusting Maintenance, etc. of a Facility during this period.

- d. Where the Japanese government concludes after its review that a Facility is highly likely to be disruptively misused, it may recommend or order that the Service Provider take measures to prevent the Facility's disruptive misuse before its introduction or entrustment of its Maintenance, etc. to a third party.
- e. Currently, there are 14 Regulated business sectors*: 1. Electricity, 2. Gas, 3. Oil, 4. Water supply, 5. Railways, 6. Freight truck transportation, 7. International maritime cargo, 8. Air transport, 9. Airports, 10. Telecommunications, 11. Broadcasting, 12. Postal services, 13. Financial services, 14. Credit card services. * Port and harbor transportation will be added as a new regulated business sector by the end of 2025.
- f. The Japanese government ministry responsible for each of the business sectors above has established criteria by Ministerial Order and has designated and publicly announced the regulated Service Providers.
- g. Examples of Facilities include monitoring and control systems for water purification facilities, railway route control and centralized traffic control systems and systems performing the function of processing account.

3. Information required to be included in plans

a. Information that must be provided before introducing a Facility

Before introducing a Facility, a Service Provider is required to disclose general information on the Facility (Art. 52, para. (2), item (i)), details on the Facility and the intended date of its introduction (Art. 52, para. (2), item (ii)(a)) and information on the Facility's suppliers (Art. 52, para. (2), item (ii)(b)) and Component Facilities (Art. 52, para. (2), item (ii)(c)). Other information must also be disclosed, including the implementation status of the required risk management measures (Art. 52, para. (2), item (iv)).

- i. General information on the Facility
- ii. General information includes the type, name, functions, place of installation and place of use of the Facility.
- iii. Details on and date of the Facility's introduction
- iv. This includes the purpose for which the Facility is being introduced, the names, etc. of the parties involved in its introduction and the intended date of its introduction.
- v. Information on the Facility's suppliers
- vi. This includes general information on the Facility's supplier, matters concerning holders of 5% or more of a supplier's voting rights, matters concerning a supplier's officers, certain information if the supplier's annual sales from transactions with a foreign government, etc. accounted for 25% or more of its total annual sales over the previous three years and the location of the plant or place of business that will manufacture the Facility.
- vii. Information on each Component Facility
- viii. This includes the type, name, function and place of installation and use of each Component Facility.
- ix. Information on the supplier of each Component Facility
- x. This includes general information on Component Facility suppliers, matters concerning holders of 5% or more of a Component Facility supplier's voting rights, matters concerning a Component Facility supplier's officers, certain information if a supplier's annual sales from transactions with a foreign government, etc. accounted for 25% or more of its total annual sales over the previous three years and the location of the plants or places of business that will manufacture the Component Facilities.
- xi. Measures to prevent specified disruptive actions (risk management measures; please see below for details)

b. Information that must be provided before entrusting Maintenance, etc. of a Facility to a third party

Before entrusting Maintenance, etc. of a Facility to a third party, a Service Provider is required to disclose general information on the Facility (Art. 52, para. (2), item (i)), details on the Maintenance, etc. (Art. 52, para. (2), item (iii)(a)), the date and/or duration of the Maintenance, etc. (Art. 52, para. (2), item (iii)(a)), information on the third party to whom the Maintenance, etc. is to be entrusted (Art. 52, para. (2), item (iii)(b)) and information on any subcontracted Maintenance, etc. (Art. 52, para. (2), item (iii)(c)). As with the introduction of a Facility, disclosure of other information is also required, including the implementation status of the required risk management measures (Art. 52, para. (2), item (iv)).

i. General information on the Facility

This includes the type, name, functions, place of installation and place of use of the Facility.

ii. Details and date or duration of the entrusted Maintenance, etc.

This includes the purpose, scope, place and date or duration of the entrusted Maintenance, etc.

iii. Information on the third party to whom the critical Maintenance, etc. is to be entrusted

This includes general information on the third party, matters concerning holders of 5% or more of the third party's voting rights, matters concerning the third party's officers and certain information if the third party's annual sales from transactions with a foreign government, etc. accounted for 25% or more of its total annual sales over the previous three years.

iv. Information on subcontracting of the Maintenance, etc.

This includes the purpose for which the Maintenance, etc. is being entrusted, details of subcontracting of the Maintenance, etc. and the place and time or duration of the Maintenance, etc.

v. Information on any subcontractors

This includes matters concerning holders of 5% or more of a subcontractor's voting rights, matters concerning the subcontractor's officers and certain information if the subcontractor's annual sales from transactions with a foreign government, etc. accounted for 25% or more of its total annual sales over the previous three years.

vi. Measures to prevent specified disruptive actions (risk management measures; please see below for details)

- c. Some information can be submitted directly by the person or entity to whom it pertains to the competent ministry, including the dates of birth and nationalities, etc. of suppliers of Facilities, their officers and counterparties of third parties to whom Maintenance, etc. is being entrusted. Information on foreign governments with whom suppliers of Facilities or third parties to whom Maintenance, etc. is being entrusted do business, as well as materials related to such information, can also be submitted directly by the persons/entities concerned to the competent ministry.

4. Risk management measure categories

Before the introduction or entrustment of the Maintenance, etc. of a Facility, measures must be taken to reduce the risk of "Specified Disruptive Actions" ("**Disruptions**") in connection with the facility. These are defined as actions taken from outside Japan to interfere with the stable provision of Specified Essential Infrastructure Services.

To effectively reduce the risk of Disruptions, a Service Provider should assess the risk and take measures proportionate to its extent and magnitude. As mentioned above, the implementation status of risk management measures needs to be reviewed by the competent ministry prior to the introduction or entrustment of the Maintenance, etc. of a Facility.

a. Overview of risk management measure categories

Risk management measures required before the introduction of Facilities

- i. Contracts, etc., with the suppliers of a Facility or a Component Facility must ensure that each Facility supplier of Component Facility Supplier is responsible for appropriately managing the Facility/Component Facility to prevent unauthorized changes from being made to it during its manufacture and/or installation and that the Service Provider can check the management status of the Facility and each of the Component Facilities.
- ii. Suppliers must be selected based on their demonstrated ability to perform inspection and/or maintenance work in connection with the Facility or the Component Facility expected to be necessary.
- iii. A Facility and each of Component Facilities must have a system to detect signs of attempted Disruption and must be sufficiently redundant and/or otherwise structured to ensure the continued provision of infrastructure services during Disruptions.
- iv. The current and past compliance of Component Facility suppliers with domestic laws and international standards must be confirmed.
- v. The supply of the Facility and the Component Facility must be ensured to be unaffected by foreign legislation.
- vi. Contracts, etc., with the Facility's suppliers and Component Facility's suppliers must require the suppliers to provide information to aid the determination of whether and to what extent they may be under foreign influence and to provide timely notification of any changes to said information after the conclusion of the contracts.

- b. Risk management measures required before the entrustment of Maintenance, etc. of Facilities
 - i. Contracts, etc., with a third party (including contracts between a third party and its subcontractor) to whom Maintenance, etc. of a Facility is being entrusted must require the third party to appropriately manage the Facility to prevent the third party or its employees from making changes to the Facility that are not intended by the Service Provider and to enable the Service Provider to confirm the Facility's management status.
 - ii. Contracts, etc., with a third party to whom Maintenance, etc. of a Facility is entrusted must require the third party to obtain the Service Provider's permission before subcontracting any Maintenance, etc. and to require the third party to provide the Service Provider with information on subcontractors sufficient to enable the Service Provider to confirm the adequacy of the subcontractor's cybersecurity measures.
 - iii. The Service Provider must confirm that the third party is unlikely to suspend or discontinue Maintenance, etc. in breach of contract.
 - iv. The Service Provider must confirm that the third party (and all of its subcontractors) is currently in compliance and has in the past complied with domestic laws and international standards.
 - v. The Service Provider must confirm that the Maintenance, etc. to be entrusted (including subcontracting) will not be affected by foreign legislation.
 - vi. Contracts, etc., with a third party (including contracts between the third party and its subcontractors) must require the third party to provide information that will aid in the determination of whether and to what extent it is under foreign influence and to give timely notification of any changes to said information after the conclusion of the contracts.

5. Exceptions and penalties

- a. An urgency exception exists allowing the introduction or entrustment of Maintenance, etc., of a Facility without prior notification where (1) there is an urgent need for the Facility, (2) the Service Provider is not simply attempting to evade the responsibility of giving notification, (3) the introduction, etc. is necessary and (4) there are no alternatives.
- b. While the Service Provider must disclose information on subcontractors of the Maintenance, etc., disclosure of certain information on subcontractors may be exempted if the Service Provider satisfies all the conditions specified in the Ministerial Order.
- c. Penalties include imprisonment for a maximum of two years, a maximum fine of up to one million yen, or both (Art. 92).

6. Disclosure of information held by and administrative organ

- a. The possible disclosure of information to a competent authority is a concern not only for Service Providers but also for their business partners.
- b. In some cases, a third party may want to know what information concerning it has been disclosed in a notification to the competent authority. Where any third parties request disclosure of information held by an administrative organ pursuant to the Act on Access to Information Held by Administrative Organs of Japan ("**Information Disclosure Act**"), it may be disclosed in accordance with the following process. Therefore, Service Providers or their business partners at least would be able to have an opportunity to submit a written opinion regarding the disclosure of information it submits to the government to the third party who requests disclosure.
 - i. The competent authority will first decide whether to disclose the information on a case-by-case basis in accordance with the provisions of the Information Disclosure Act (Art. 9).
 - ii. If a requested document contains personal information enabling a specific individual to be identified (excluding business information concerning an individual who operates the business), it will be disclosed only in limited circumstances (e.g., where necessary to protect a person's life, health, livelihood or property) (Art. 5).
 - iii. If a requested document contains information concerning a third party (a non-governmental person or entity other than the maker of the disclosure request), the third party will be given an opportunity to submit a written opinion on the disclosure (Art. 13).

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