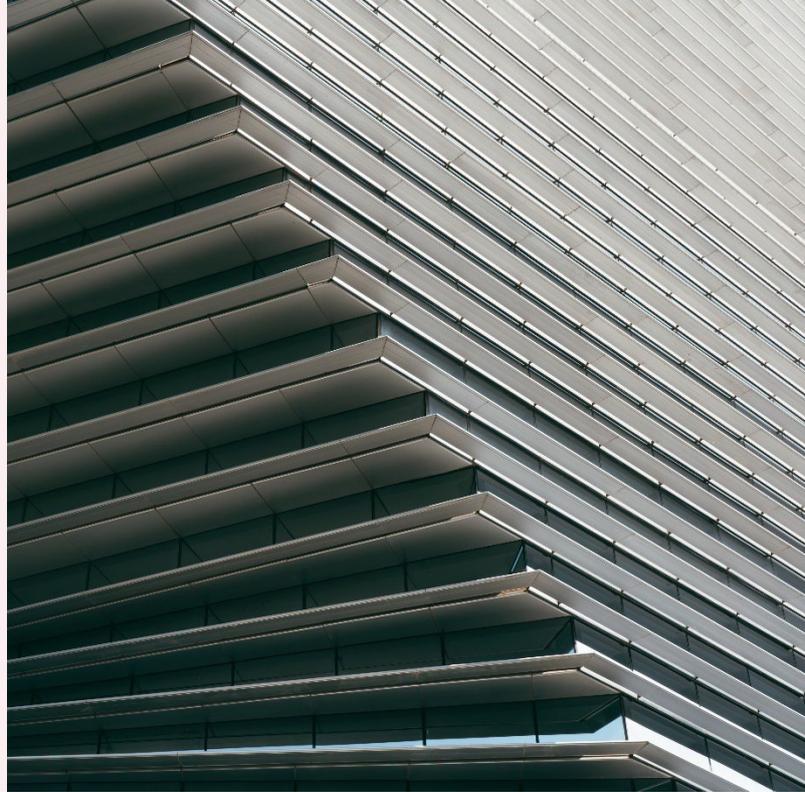


The Japan-Paraguay Bilateral Investment Treaty

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INTRODUCTION

On 5 December 2025, Japan and Paraguay signed a bilateral investment treaty named 'The Agreement between Japan and the Republic of Paraguay for the Promotion and Protection of Investment' (Japan-Paraguay BIT or BIT). This BIT is expected to be ratified and enter into force in 2026. It will expand protections for Japanese investors in South America, adding to the treaties already in force with Argentina (2018), Colombia (2011), Peru (2008) and Uruguay (2015).

The signing of the Japan-Paraguay BIT is significant, as it reflects the Japanese government's desire to protect Japanese corporations with current or future investments in Paraguay. It also demonstrates an interest from the Paraguayan government in attracting more investment from Japan. A statement from the Japanese Ministry of Foreign Affairs explains further:

*"The fact that Paraguay is relatively stable in terms of political and social conditions, along with its regional and geographical characteristics of being a member of Mercosur and being close to Brazil, a core country in the South American region, is increasingly attracting interest from Japanese companies. Additionally, the Paraguayan government is actively working on developing a system to promote foreign investment, and the conclusion of this agreement is expected to further develop the investment environment in Paraguay and promote investment by Japanese companies."*¹

This statement reflects an increasing interest from Japanese investors to invest in the South American region in general, and Paraguay's relative stability and its proximity to Brazil make it a particularly attractive destination for Japanese foreign investment.

Backed up with an international arbitration clause, the Japan-Paraguay BIT creates wide-ranging and enforceable rights for Japanese investors in Paraguay. The treaty can therefore be used as a means to mitigate political risks, although there are various limitations of which Japanese investors should be aware.

¹ https://www.mofa.go.jp/press/release/pressite_000001_01898.html

This briefing explains who and what are covered by the treaty, the nature of the protections and how they may be enforced. It also notes some unique features of the treaty.

Key issues

- 1 Signed on 5 December 2025, the treaty is Japan's fifth investment treaty signed with a South American country.
- 2 The treaty contains robust protections for Japanese investors in Paraguay and Paraguayan investors in Japan.
- 3 The protections are subject to various limitations and exclusions.
- 4 Investment protection is given "teeth" by providing for investor-state dispute settlement ("ISDS") in the form of a detailed arbitration clause.
- 5 The ISDS mechanism under the treaty can be invoked if Paraguay breaches the treaty.
- 6 Signing of this treaty continues the Japanese Government's push to expand its investment treaty protection for Japanese investors in South America.

A WIDE RANGE OF BUSINESS INTERESTS ARE PROTECTED

Who and what is covered?

The Japan-Paraguay BIT protects "*investors*" from Japan and Paraguay. The definition of "*investor*" includes Japanese and Paraguayan nationals as well as "*enterprises*". An "*enterprise*" is defined broadly to cover most forms of corporation, trust, partnership sole proprietorship, joint venture, association or company or other legal form of association that is "*duly constituted or organised under the applicable laws and regulations*". However, as is commonly the case in investment treaties of this kind, there is a 'Denial of Benefits' clause (Article 21), which excludes Japanese or Paraguayan enterprises from taking advantage of rights conferred by the treaty if such enterprises are subject to the majority ownership or control of a foreign third party that does not have "*substantial business activities*" in Japan or Paraguay (as applicable). Whether or not the person or enterprise from the third-party state has "*substantial business activities*" is a matter that has been the subject of dispute before international tribunals. Factors that may be taken into consideration in determining whether the requirement has been satisfied include whether the relevant entity has a physical office or pays tax in their home state.

An "*investment*" protected under the Japan-Paraguay BIT is also defined widely and includes property rights, shares, stocks, bonds, debentures, intellectual property rights, licences, rights under contracts and other assets. Reflecting the industries that are subject to existing Japanese investment in Paraguay, "*turnkey, construction management, production or revenue sharing contracts*" are expressly included as an example of a covered investment. Other examples include "*industrial designs*" and "*concessions, licences, authorisations and permits, including those for the exploration and exploitation of natural resources*". Construction is evidently a target sector for Japanese investment in Paraguay, with the signing of

the Japan-Paraguay BIT coinciding with a JPY 36bn ODA loan between the Japan International Cooperation Agency (JICA) and the Paraguayan government.²

The investment protections created by the Japan-Paraguay BIT apply to investments made both prior to or after the entry into force of the BIT, albeit not in respect of breaches occurring before entry into force.

WHAT PROTECTIONS ARE AVAILABLE?

Amongst *other* rights, the Japan-Paraguay BIT includes the following key protections for covered Japanese foreign investors and investments:

National treatment (Article 3): Paraguay is prohibited from discrimination based on an investor's nationality. In other words, Japanese investors in Paraguay are entitled to the same treatment that Paraguay grants to Paraguayan investors.

Protection from expropriation and nationalisation (Article 11): Paraguay may not unlawfully expropriate or nationalise covered investments except for a public purpose, in accordance with due process on a non-discriminatory basis and accompanied by payment to the investor by the state of "*prompt, adequate and effective*" compensation. The Japan-Paraguay BIT expressly protects against both direct and indirect expropriation, and Article 11(2)(a)(i) contains additional wording describing what factors are to be considered in determining whether an indirect expropriation has occurred.

Fair and equitable treatment (FET) (Article 5): Japanese investments must be treated in a fair and equitable manner by Paraguay. This protects against discriminatory or arbitrary treatment and governmental measures that violate the investor's legitimate expectations. However, FET must be "*in accordance with customary international law*", which may give rise to arguments that a different standard of protection applies compared to other types of FET clauses found in investment protection treaties (although Japan typically qualifies its modern FET clauses in this manner).

Full protection and security (FPS) (Article 5): Paraguay must provide physical police protection to Japanese investments, which must be at least the same as the protections provided to Paraguayan nationals. Notably, this protection is also linked to the "*customary international law*" standard. However, it is also bolstered by provisions concerning 'Protection from Strife' (Article 12), which seek to ensure equality for covered investors in entitlement to compensation made as a result of losses caused by civil war, revolution or other kind of violent disruption.

Free transfers (Article 14): Subject to certain limitations, covered Japanese investors are entitled to free transfer of capital, profits, interests, royalties, fees, dividends, or other cashflows related to their investments into and out of Paraguay.

Most-favoured nation treatment (MFN) (Article 4): Japanese investors covered by the BIT are entitled to be treated no less favourably than other third-party foreign investors in Paraguay who may benefit from protections under international agreements post-dating the Japan-Paraguay BIT. This protection is limited to investors "*in like circumstances*" when compared to third-party investors granted rights under other

² https://www.jica.go.jp/english/information/press/2025/20251209_11.html

treaties. The treaty provides additional prescription as to the meaning of "*in like circumstances*", stipulating that it "*depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investments or investors on the basis of legitimate public welfare objectives*".

Potential investors should note that the MFN clause is inapplicable to investments made within certain specified industries and sectors (such as land acquisition, territorial fishing and regulated sectors) and also expressly excludes procedural rights (i.e., ISDS).

Limitations and Exclusions

Although the protections for investors provided by the Japan-Paraguay BIT are wide-ranging, there are various limitations and exclusions of which investors and potential investors should be aware. In particular, Article 15 contains an agreement that neither Japan or Paraguay is prevented from taking necessary measures aimed at protecting human health, animal or plant life, national treasures, public order and essential security interests. However, to fall under the exception, such measures cannot be a "*disguised restriction*", arbitrary or constitute "*unjustifiable discrimination*".

Article 19 also contains some general exclusions as to taxation measures taken by either State.

It is important for investors expecting to rely on the protections in the Japan-Paraguay BIT to be aware of potential exclusions and to consider carefully whether their investments might be better protected through alternate structures that may benefit from more favourable BITs entered into by Paraguay.

Enforceable rights and obligations

The Japan-Paraguay BIT contains an ISDS mechanism (Article 23), which allows investors to enforce rights granted under the treaty through international arbitration. Specifically, Japan and Paraguay consent to the submission of an investment dispute for arbitration either under the rules of the International Center for the Settlement of Investment Disputes (**ICSID**) or the Rules of the United Nations Commission on International Trade Law (**UNCITRAL Rules**). Both Japan and Paraguay are members of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**New York Convention**) and the Convention on the Settlement of Investment Disputes between States and Nationals of other States (**ICSID Convention**).³ This means an arbitral award obtained under the BIT by a Japanese investor against Paraguay can be enforced in the territory of any member of the relevant convention. In practice, this makes enforcement of such an award possible in over 165 jurisdictions worldwide.

Moreover, the ISDS clause provides covered investors with access to a dispute settlement process conducted outside the jurisdiction of either party. This mitigates the political risk associated with investments into Paraguay from Japan, which may in turn reduce the cost of capital for Japanese investors in Paraguay.

Investors should be aware that the dispute resolution clause requires the parties to a dispute to try and resolve any such dispute commercially prior to commencing arbitration. Additionally, the treaty seeks to impose certain

³ Paraguay ratified the ICSID Convention in January 1983.

time limits and notice requirements on investors who may commence arbitration proceedings under the treaty.

Further Information

Expert guidance on investment treaty structuring at the dealmaking stage and resolving disputes with foreign governments that breach such treaties is available from Clifford Chance. This note is an overview only and is not legal advice. For further explanation on the protections available under the Japan-Paraguay BIT, please contact one of the individuals listed below.



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