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## First Steps into the Japanese Education Market

- Legal Issues with respect to the Education Business and International Schools -

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### I. Introduction

Recently, there is an increasing interest among foreign companies and schools to develop various types of educational businesses in Japan. Some foreign businesses target Japanese parents who are eager to provide their children with English education and are offering specific services combined with up-to-date educational technology (EdTech). Furthermore, the recent establishment of international schools in Japan indicates that the country is an attractive location for education, partly because of its natural beauty, which provides a unique experience for young children, and a safe environment as compared with other countries. Such international schools are now popular among both domestic and overseas parents.

This paper outlines the legal issues overseas companies and schools should be aware of when entering into the Japanese education market, including the establishment of international schools.

## II. Regulations on Educational Businesses

### 1. General

In some countries, the entry of foreign entities into the domestic education market requires the approval or permission of the authorities. Japanese law, other than the regulations on the establishment of schools and entities related to the operation thereof, as described below, does not have any direct regulation of educational businesses.

Please note that if a foreign company establishes and owns a new entity in Japan or acquires a share in a Japanese company in connection with the operation of an education business in Japan, it has to notify the authorities about such establishment and acquisition in accordance with the Foreign Exchange and Foreign Trade Act<sup>1</sup>.

### 2. Legal Issues with respect to Educational Businesses

As many young children in Japan own PCs and smartphones, some educational businesses reach out directly to them and, in some cases, children may apply for their services without the parents' consent. In order to avoid such risk, the law and regulations for the protection of the minor (i.e., children below 18 years old) should be taken into account.

Pursuant to Japanese Civil Code, in order to enter into a valid agreement, the consent of the child's legal guardian must be obtained (Civil Code Article 5, Paragraph 1) or else the agreement is subject to cancellation (Paragraph 2)<sup>2</sup>. The one exception is if the minor person fraudulently leads the counterparts to believe that he/she is an adult (Article 21). Yet, it is unclear under what circumstances can such counterpart claim that there was a misrepresentation due to the child's fraud. In general, in a case whereby the user simply clicks "yes" to the question "Are you of legal age?" or part of the terms of use state "If you are a minor, you must obtain the consent of your legal guardian", the child's consent is not deemed fraudulent and the agreement is still subject to cancellation. Therefore, there should be a system verifying that the legal guardian's consent has been obtained when there is a sale of services to minors. For example, a reminder that "the consent of a legal guardian must be obtained" should be displayed on the application, using appropriate font size, color and wording.

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<sup>1</sup> Depending on the type of business, foreign companies which are active in certain domains must undertake notification procedures prior to or following the establishment and acquisition of a business in Japan. Educational businesses are not categorized within the group requiring prior notification, but some industries, such as software-related businesses, are. Therefore, foreign companies should verify whether their business requires a prior notification with the authorities.

<sup>2</sup> The Civil Code stipulates that property that the legal guardian allowed to be disposed of with/without a certain purpose can be freely disposed of by a minor within the scope of that purpose even without the legal guardian's consent (Paragraph 3). The business may rely on this exception with respect to inexpensive services that can be purchased with the minor's reasonable allowance.

Furthermore, under Japanese consumer protection regulations, in case a business is aware that the consumer is extremely anxious about their educational or professional careers due to their inexperience, and the provider of products or services tells them, without justification, that such product or services would contribute to their success (intentionally taking advantage of their anxiety), such conduct may be deemed unfair solicitation and the agreement subject to cancellation (Article 4, Paragraph 3, Item 3 of the Consumer Contract Act). Therefore, when a business is targeting children, the advertisements should not be exaggerated, include inflated results or use stimulative wording in connection with higher education and the success-rate of passing certain exams. The Act also imposes an obligation to make an effort to provide the necessary information regarding the consumer's rights and obligations, and other details included in the contract, while taking into consideration the level of knowledge and experience of the individual consumer (Article 3, Paragraph 1, Item 2). When the consumer is young and does not have sufficient knowledge and experience, the marketing should start with a basic explanation as compared with products or services targeting the average consumer.

### **III. Establishment of International Schools**

#### **1. Type of International School**

There are 3 categories of international schools for children in Japan:

- 1) Schools established under Article 1 of the School Education Law (i.e., “kindergartens”, “elementary schools”, “junior high schools”, “high schools” etc. They are often referred to as “Article 1 Schools” or “*Ichijyo-Ko*”). This type of school can grant its graduates the qualification to enter Japanese schools which belong to the subsequent step (e.g., graduation from junior high schools is usually required in order to proceed to high school). These schools have to provide a curriculum which strictly adheres by the curriculum guidelines prescribed by the Ministry of Education, Culture, Sports, Science and Technology (MEXT).
- 2) Schools established as “miscellaneous schools” under Article 134 of the School Education Law are educational facilities approved by the prefectural governor or other relevant authority. They cannot grant a qualification to proceed to the subsequent schools, but the curriculum can be much more flexible than that of Article 1 Schools.
- 3) Schools not authorized under the School Education Law. Since the establishment and operation of such schools is rather simple, many international schools have opted to be classified within this type. Please note that certain issues, such as lower tax benefits and a requirement to obtain student visas, must be taken into account.

Since the establishment of an Article 1 School (type 1) is burdensome as far as time and costs, most international schools belong to type 2 (“authorized schools”) or type 3 (“unauthorized schools”). Therefore, we will focus on them below.

## **2. Establishment of an Authorized School (type 2)**

In case of the establishment of authorized schools, incorporation of a quasi-school organization for the operation thereof is also required. The organization must meet the (i) incorporation criteria and obtain approval as a quasi-school organization (Article 64, Paragraph 5 of the Private Schools Act) and (ii) establishment criteria and obtain authorization as a miscellaneous school. Such criteria vary between one prefecture and another.

One of the important requirements is self-financing (e.g., the organization has to own facilities and equipment, though in some cases a lease of the land and building suffices, subject to the condition that the organization maintains a certain level of cash). In addition, the organization must have at least five directors and two auditors.

Miscellaneous schools must meet the establishment curriculum related criteria, such as a minimum term of one year and a minimum of 680 teaching hours.

Since site inspections and interviews take place in addition to the examination of documents and the plan being approved, then are followed by the construction of the building, the approval process for a quasi-school is usually at least one year.

## **3. Establishment of an Unauthorized School (type 3)**

The establishment of unauthorized schools does not require approval from the authorities. Unauthorized schools can be operated by individuals or corporations and, therefore, the setup of an operational body is relatively easy.

However, since students and their parents sometimes face difficulties due to the sudden closure of an unauthorized school and are not sufficiently supported by the authorities, the lack of responsibility and accountability of this type of school is strongly criticized. It is advisable for the operational body to have sufficient funds to operate the school on a continuous basis.

## **IV. Summary**

While the entry barriers to the Japanese educational business market by foreign entities are not high, the legal regulations and procedures widely vary depending on the type of business. When planning to enter the Japanese education market, one should consult with their legal experts regarding the applicable regulations and legal issues to be taken into consideration.

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