



Japan

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Japan has basically adopted the civil law system.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

General restrictions

An acquisition of shares in a Japanese company by a foreign investor is subject to reporting requirements under the Foreign Exchange and Foreign Trade Act (FEFTA), specifically:

- **Post-facto report.** Under the FEFTA, an acquiring foreign investor must file a post-facto report with the Bank of Japan if the investor's shareholding ratio reaches 10% or more of the total issued shares of the company by the 15th day of the following month.
- **Advance notification.** An acquiring foreign investor must file advanced notification and comply with certain waiting periods where a company in Japan engages in certain sensitive businesses such as, among others:
 - national security;
 - handling nuclear materials;
 - public services;
 - agriculture and forestry.

Specific

There are several business or entity-specific foreign ownership restrictions. For example, broadcasting businesses, aviation businesses, telephone companies, and Nippon Telegraph and Telephone Corporation (NTT) are subject to foreign ownership restrictions under the relevant laws.

3. Are there any exchange control or currency regulations?

Capital transactions of a certain size between a Japan resident and a non-resident are subject to reporting requirements under the FEFTA.

In addition, there are certain reporting and identity verification requirements under anti-money laundering laws, such as the Act on Prevention of Transfer of Criminal Proceeds.

4. What grants or incentives are available to investors?

Generally, there are no grants or incentives to foreign investors.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies in your jurisdiction, and what are the main applicable formalities, rights, restrictions and liabilities?

The most common form of business vehicle used by foreign companies is a stock company (*Kabushiki Kaisha*).

Registration formalities

The following steps must be taken to form a stock company. It usually takes about one to two months to complete the process:

- Drafting of the articles of incorporation (articles) by the incorporators.
- Certification of the articles of incorporation by a notary public.
- Performance of contributions by the incorporators and other subscribers.
- Election of directors (and corporate auditors if any) at incorporation. The directors (and corporate auditors if any) at incorporation must investigate, among other things, the legality of the company's formation and whether the contributions by the incorporators have been completed.
- Registration of the incorporation of the company on the commercial registry.

A stock company's trade name must include the term, *Kabushiki Kaisha* (stock company). A stock company cannot use, with a wrongful purpose, any name or trade name similar to another company by which the stock company might be mistaken for that other company.

Share capital

There is no maximum or minimum share capital requirement. There is no limit on the number of shareholders. From incorporation it can be arranged to have only one shareholder. Multiple classes of shares can be issued. However, all shares must be fully paid up at the time of issue (no partly paid shares are allowed).



Non-cash consideration

Shares can be issued for non-cash consideration subject to certain appraisal process under the Companies Act.

Rights attaching to shares

Restrictions on rights attaching to shares. Stock companies can issue different classes of shares with specific rights and restrictions, for example, restrictions on rights to receive a dividend and restrictions on voting rights. However, stock companies must comply with the principle of shareholder equality, and therefore cannot discriminate between holders of the same class of share.

Automatic rights attaching to shares. Unless otherwise stipulated in the articles, the following rights, among other rights, are attached to shares:

- Right to receive a dividend.
- Voting rights at a shareholders meeting.

Foreign shareholders

There are no restrictions on foreign shareholders, except for restrictions on foreign investment (see *Question 2*). Some stock companies require foreign shareholders to designate a proxy agent (*jonin-dairinin*) in Japan to receive notices from stock companies.

Management structure

The Companies Act requires only one director for a private company (that is, a stock company whose shares are subject to transfer restrictions by its articles) and three directors for a publicly held company (that is, a stock company whose shares are not subject to transfer restrictions by its articles). The Companies Act does not require any corporate auditors in general while a stock company with certain management structure or certain amount of capital or debt is required to appoint corporate auditors.

There is a wider range of options of management structure available for a stock company. It can be structured either as a stock company mostly managed by its shareholders with a sole director or as a stock company which employs a rigorous management structure with a board of directors and several sub-committees. Requirements with regard to corporate auditors and accountants also vary depending on what management structure is employed.

A representative director of a stock company can represent and bind the stock company, although certain material decisions require a board resolution or approval by shareholders' meeting.

Management restrictions

There are no citizenship requirements for any directors or employees of a company except that at least one of the representative directors must be resident in Japan.

Directors' and officers' liability

Under the Companies Act, among others:

- Each director must perform his duties faithfully on behalf of the company.
- Directors must obey any law or ordinance and the articles, as well as resolutions of general meetings of shareholders.

- A director has a mandate (*inin*), and, as such, each director is obligated under the provisions of the Civil Code to manage the affairs entrusted to him with the care of a good manager in accordance with the terms of the mandate.

Parent company liability

Generally, a foreign parent company's liability for its Japanese stock company subsidiary as a stock company in Japan is limited to its capital contribution which is already completed. This effectively insulates the parent company from Japanese jurisdiction for most purposes.

Reporting requirements

The reporting obligations are, among others:

- On incorporation of a stock company, it must register certain items with the Legal Affairs Bureau, such as the:
 - company name;
 - address;
 - business purposes;
 - amount of capital;
 - number of shares;
 - directors' names.

Any change to the registered item must be registered in the future.

- Reports under Japan's labour, social insurance and tax laws are required similar to the branch office.
- A stock company must give periodic public notice of its balance sheet (or a summary of it in certain cases) by the registered method (in most cases in the official gazette (*kanpo*)) or by providing such information by other methods such as electronic public notification system.
- Filing obligations under the FEFTA also apply to a company.

EMPLOYMENT

Laws, contracts and permits

6. What are the main laws regulating employment relationships?

The main laws regulating individual employment relationships are:

- Contract laws such as the Civil Code and the Labour Contract Act (LCA).
- Labour protection laws such as the Labour Standards Act (LSA), which provides minimum standards for the conditions of employment.

Under the Act on General Rules for Application of Laws of Japan (AGRAL), an employee and its employer can agree on the law to govern an employment contract (*Article 7, AGRAL*). If Japanese law is the governing law, the contract laws of Japan apply to an employment contract of a foreign employee working in Japan or an employee from Japan working abroad. However, if a foreign law is designated as the governing law, the contract laws of Japan do not apply.



For foreign employees working in Japan, even if foreign law is designated as the governing law, it is generally understood that regardless of their nationality and any agreement on the governing law, the LSA and other labour protection laws apply. In addition, foreign employees can request the application of mandatory provisions of the LCA (such as the general rule on the dismissal of employees under Article 16) by notifying their employer (*Article 12, paragraph 1, AGRAL*). This notification can be made at anytime.

Japanese employees working abroad are not subject to Japanese labour law if a foreign law is designated as the governing law (*AGRAL*), unless otherwise agreed. Japanese employees cannot request the application of mandatory provisions of the LCA.

Contract requirements

7. Is a written contract of employment required, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

An employment contract can be made either by oral agreement or written agreement. However, on or before entering into an employment contract, an employer is required to expressly show newly-hired employees important employment conditions in writing (*Article 15, LSA*), such as the:

- Term of their employment contract.
- Job description.
- Workplace.
- Working hours.
- Wages.
- Grounds for termination of employment, retirement and dismissal.

An employer who hires ten or more employees must establish rules of employment, which stipulate details of employment conditions and govern the employment relationship (*Article 89, LSA*).

If there is a collective bargaining agreement (CBA) with a labour union, employment terms agreed in the CBA govern at least the employment relationship with employees who belong to such labour union (*Article 16, Labour Union Act*).

Any implied terms can also govern the employment relationship.

8. Do foreign employees require work permits and/or residency permits?

Under the Immigration Control and Refugee Recognition Act, foreign employees must obtain a visa allowing them to work in Japan during their stay (Working Visa). It normally takes one to three months to obtain a Working Visa depending on various circumstances. The cost of a visa differs depending on a foreign employee's nationality.

Termination and redundancy

9. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

In general, employees are not legally entitled to management representation or to be consulted in relation to corporate transactions except where:

- A CBA provides that a labour union is entitled to management representation or consultation.
- A labour union requires a collective bargaining session on the basis that a corporate transaction affects employment conditions and the employment status of employees belonging to that labour union (*Article 7, Labour Union Act*).
- An employer intends to transfer its business by way of a corporate split under the Companies Act.

If an employer intends to transfer its business by way of a business transfer, the employer must obtain consent from employees whose employment will be transferred (*Article 625, paragraph 1, Civil Code*). Therefore in practice it is quite common to consult and negotiate with the transferring employees before a business transfer.

Further, during the redundancy process, sincere attempts at negotiation and consultation must be undertaken, either with employees or their representatives (including a labour union) to proceed with the redundancy process smoothly (*see Question 10*).

Agreements/implied terms

10. How is the termination of individual employment contracts regulated?

Generally speaking, an employee working in Japan is afforded strong protection under Japanese employment law, and it is very difficult for an employer to lawfully unilaterally terminate their employment. Even if there is an express term regarding termination in the employment contract or rules of employment, unilateral termination by the employer is an abuse of rights and is null and void unless the employer can demonstrate that the termination was based on objectively legitimate reasons and socially justifiable (*Article 16, LCA*).

According to Supreme Court precedents, if employment was terminated on one of the following grounds, in general, it will be based on objectively legitimate reasons and socially justifiable:

- Employee misconduct which constitutes a serious violation of the disciplinary rules of the rules of employment.
- The employee was unable to perform their duties adequately, lacked the requisite ability or competence due to physical or mental disabilities, or performed extremely poorly.
- Redundancies were necessary due to the employer's difficult financial situation.
- Termination of employment as a result of a union shop agreement with a labour union.



When an employer dismisses employees, as a minimum the employer must:

- Give at least 30 days advance notice of dismissal or payment in lieu of notice (*Article 20, LSA*).
- Pay all amounts to which the employees are entitled under the rules of employment and their individual employment contracts.

If unfair/unjustified termination is proven and the termination is rendered null and void, a court will reinstate the dismissed employee and order the employer to pay the aggregate amount of salary which the employee would have received (up to the date of judgment) had the employer not unilaterally terminated the relevant employment contract.

11. Are redundancies and mass layoffs regulated?

Where an employer wishes to continue business operations in Japan with a substantial reduction in the number of employees, it is known as “termination of employment for redundancy” (*seiri kaiko*). In these cases, it is generally understood that an employer must demonstrate that the termination was based on objectively legitimate reasons and socially justifiable by satisfying all elements of a four point test (*Article 16, LCA*):

- Shedding of employees is justified by a strong financial or business need, such that it would be extremely difficult for the employer to continue its business without implementing a reduction of employees (and not merely the fact that the employer would be more profitable if the employees were dismissed).
- The employer has already made all reasonable efforts to avoid dismissal, such as intra-company transfers (or in some cases, associated-company transfers), offering voluntary resignation with severance compensation, and reducing other operating costs.
- The selection of employees for termination was conducted in a fair manner and in accordance with a reasonable and objective standard established by the employer. The selection criteria must be fair and based on a rational procedure. It must not be based on the employee’s gender, membership of a labour union, race, creed, or other discriminatory reason.
- Sincere attempts at negotiation have been undertaken, either with employees or their representatives (including a labour union, if applicable), to achieve the voluntary resignation of employees, but were unsuccessful.

TAX

Taxes on employment

12. In relation to employees, what constitutes tax residency in your jurisdiction?

A natural person who has his domicile in Japan or has a residence in Japan for one year or more is considered a resident for Japanese tax purposes.

Domicile is the main place around which his life is based, determined generally by objective facts and circumstances. Residence is defined as the place at which he lives for a certain continuous period, though not amounting to the main place around which his life is based.

If a person has an occupation which generally requires continuous residency for one year or more, he is presumed to be a resident for Japanese tax purposes.

13. What income tax or social security contributions must be paid during the employment relationship?

Tax resident employees

Tax resident employees are subject to individual income tax for all income from whatever source derived. The rate is progressive up to 50% (50.84% from 1 January 2013 until 31 December 2037).

The tax year is a calendar year for tax resident employees. Tax resident employees are not required to file a tax return unless, for example, their income is JPY20 million or more per year (as at 1 November 2011, US\$1 was about JPY78). If a tax resident employee does not file a tax return, he is eligible for a year end adjustment which functions as a substitute for the filing of a tax return.

Tax-resident employees hired by a company must bear the premiums for the following social and labour insurance:

- Welfare pension insurance (*koseinenkin-hoken*): 8.206% of their standard monthly salary.
- Health insurance (*kenko-hoken*): around 5% of their standard monthly salary. The rate differs depending on several factors such as the location of their workplace, their age, the health insurance association to which they belong and their insurance status.
- Unemployment insurance (*koyo-hoken*): either 0.5% or 0.6% of their monthly salary depending on their employer’s business.

Rates are reviewed periodically. These three premiums are paid by the employer to the relevant bodies after being withheld from each employee’s salary.

Non-tax resident employees

Non-tax resident employees are subject to individual income tax on Japan-source income, but not on foreign-source income. The scope of taxable income differs from non-tax resident employees with a permanent establishment to non-tax resident employees without a permanent establishment:

- Non-tax resident employees with a permanent establishment in Japan will generally be taxed at a progressive tax rate of up to 50% (50.84% from 1 January 2013 until 31 December 2037).
- Non-tax resident employees without a permanent establishment in Japan will be taxed at a progressive tax rate of up to 50% (50.84% from 1 January 2013 until 31 December 2037) on certain income such as capital gains, and at 15% (15.315% from 1 January 2013 until 31 December 2037) to 20% (20.42% from 1 January 2013 until 31 December 2037) on certain income such as dividends, interest and royalties.



These rates may be altered by the operation of tax treaties to which Japan is a signatory (see *Question 22*). When non-tax resident employees are taxed at the progressive tax rate, they are generally required to file a tax return.

Employers

Employers must bear the premiums for the following social and labour insurance in respect of each employee. Employers must pay employer and employee premiums (see above, *Tax resident employees*) to the relevant bodies. Rates are reviewed periodically.

- Welfare pension insurance (*hoseinenkin-hoken*): 8.206% (see above, *Tax resident employees*).
- Health insurance (*kenko-hoken*): around 5% of the standard monthly salary of the employee (see above, *Tax resident employees*).
- Unemployment insurance (*koyo-hoken*): either 0.85%, 0.95% or 1.05% of the employee's monthly salary depending on the employer's business.
- Workers accident compensation insurance (*rosai-hoken*): 0.25% to 8.9% of the employee's monthly salary depending on the employer's business.

Business vehicles

14. What constitutes tax residency in relation to business vehicles?

Tax residency is determined by the place of the vehicle's head office or main office. If the place of the vehicle's head office or main office is in Japan, the business vehicle is a domestic corporation for Japanese tax purposes.

15. What are the main taxes that potentially apply to a tax resident business vehicle (including rates)?

A tax resident business vehicle such as a corporation is taxed on its worldwide income. Within two months from the end of the business year, a corporation must file a corporate tax return. This two-month period may be extended with the permission of the tax authority. A tax resident business vehicle is also generally subject to:

- Local corporate inhabitant tax. The rates for this tax may vary between regions.
- Local enterprise tax. The rates for this tax may vary between regions.

The effective tax rate for a business vehicle including local taxes is approximately 42% (approximately 39% for the business years commencing on or after 1 April 2012 until 31 March 2015 and approximately 37% for business years commencing on or after 1 April 2015).

Consumption tax is generally imposed at 5% on services rendered within Japan and the sale of goods in Japan by a business vehicle. The consumption tax borne by the business vehicle when it purchases goods can be credited against the consumption tax due and payable for the business vehicle.

16. How are the activities of non-tax resident business vehicles taxed?

Non-tax resident business vehicles with a permanent establishment in Japan are taxed on Japan-source income and are required to file a tax return. As long as the income derived is from a Japanese source, it is subject to Japanese taxation. However, if a tax treaty exists between Japan and the jurisdiction where the headquarters of the permanent establishment in Japan is located, only the Japan-source income attributable to the permanent establishment is subject to Japanese taxation.

Non-tax resident business vehicles without a permanent establishment in Japan are generally subject to withholding tax only (see *Question 17*), with certain exceptions such as the income derived from the sale of land and performance of services. The types of permanent establishment provided for under the Japanese tax codes are:

- Fixed places of business.
- Construction sites open for more than one year.
- Agents who habitually exercise the authority to enter into contracts on behalf of the headquarters.

The scope of permanent establishment is altered by the operation of the tax treaties to which Japan is a signatory.

Dividends, interest and IP royalties

17. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

Foreign corporate shareholders without a permanent establishment in Japan are only subject to withholding tax. The basic withholding tax rate is 20% (20.42% from 1 January 2013 until 31 December 2037). Preferential tax treatment for the dividends received from listed shares is available until 31 December 2013.

Foreign corporate shareholders with a permanent establishment in Japan are subject to withholding tax and must file a tax return. The amount withheld will be credited against the corporate income tax that is due. Foreign corporate shareholders with a permanent establishment can be exempt from withholding tax if they file an application with the tax authority and obtain a certificate. The withholding tax rate may be reduced or eliminated by the operation of applicable tax treaties.



Dividends received

Dividends received from foreign companies are generally included in the taxable income of the corporation (see *Question 15*). The amount of foreign tax imposed upon such dividends can generally be used as a foreign tax credit with certain restrictions. If dividends are paid from a subsidiary when 25% or more of that subsidiary's shares are held by a Japanese parent company for more than six months, the parent company will not be taxed for 95% of dividends paid by the subsidiary. This shareholding ratio may be reduced under applicable tax treaties.

Interest paid

Foreign corporate shareholders without a permanent establishment in Japan are only subject to withholding tax. The basic withholding tax rate is 15% (15.315% from 1 January 2013 until 31 December 2037).

Foreign corporate shareholders with a permanent establishment in Japan are subject to withholding tax and must file a tax return. The amount withheld will be credited against the corporate income tax that is due. Foreign corporate shareholders with a permanent establishment can be exempt from withholding tax if they file an application to the tax authority and obtain a certificate. Withholding tax may be reduced or eliminated by the operation of applicable tax treaties.

IP royalties paid

This is the same as for dividends paid except that the basic withholding tax rate is 20% (20.42% from 1 January 2013 until 31 December 2037) (see *above, Dividends paid*).

Groups, affiliates and related parties

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Generally, the thin capitalisation rules apply, if both:

- A Japanese company pays interest or guarantee fees to a foreign controlling shareholder (who directly or indirectly holds 50% or more of the shares of the Japanese company).
- The average amount of debt owed to the foreign controlling shareholder exceeds three times the amount of net book value held by the foreign controlling shareholder.

If the rules apply, an interest payment deduction will not be allowed for the amount corresponding to the exceeding amount.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Controlled foreign company rules apply under certain conditions.

If a group of Japanese resident shareholders hold directly or indirectly more than 50% of the shares of a subsidiary which is

located in a jurisdiction whose tax burden on income is 20% or less, or no income tax is imposed at all, a resident shareholder who holds 10% or more of the shares of that subsidiary must include the profits of the subsidiary, corresponding to his shareholding ratio, in his income. Certain exemption rules are available such as active business operation of the subsidiary.

20. Are there any transfer pricing rules?

When one party to a transaction holds 50% or more of the shares of the other party to the transaction or essentially controls the other party, the transaction price may be subject to transfer pricing taxation in Japan. Transfer pricing taxation in Japan only applies to international transactions where one party to the transaction is not a domestic company. In order to avoid the application of transfer pricing taxation, an advance pricing agreement (APA) is available.

Customs duties

21. How are imports and exports taxed?

Import duty and consumption tax (as well as other indirect tax such as liquor tax and tobacco tax) are imposed when goods are received by an importer of record from a bonded area.

The rate and amount of import duty varies significantly among goods. The consumption tax rate is 5%. The rates of other applicable indirect taxes also vary.

Exports are not taxed and are zero-rated for consumption tax purposes.

Double tax treaties

22. Is there a wide network of double tax treaties?

Japan is a signatory to more than 60 double tax treaties with jurisdictions such as the US, UK, Australia, Germany, Hong Kong, Singapore, South Korea, Holland, China, Brazil, Russia, India and Saudi Arabia. Generally, double tax treaties provide preferential tax treatment, while certain tax treaties mainly provide for the exchange of information between competent authorities.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law?

The Antimonopoly Act (Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade) (AMA) prohibits the following restrictive agreements and practices (including those conducted by trade associations):

- Unreasonable restraints of trade (such as cartels and bid-rigging).

- Private monopolies.
- Unfair trade practices such as:
 - refusal to deal;
 - price discrimination;
 - unfair price cutting;
 - resale price maintenance;
 - abuse of a dominant bargaining position;
 - other activities designated by the Japan Fair Trade Commission.

The AMA addresses both horizontal and vertical restraints.

Unreasonable restraints of trade as well as abuse of a dominant bargaining position are subject to administrative fines. Unreasonable restraints of trade and private monopolies (including those conducted by trade associations) are subject to criminal fines or imprisonment.

International agreements and contracts that are unreasonable restraints of trade or unfair trade practices are prohibited under the AMA. The AMA can apply to foreign entities and transactions outside Japan if they have an effect on the Japanese market.

24. Is unilateral (or single-firm) conduct regulated by competition law?

The AMA prohibits the following unilateral acts:

- Private monopolies.
- Unfair trade practices such as:
 - unilateral refusal to deal;
 - price discrimination;
 - unfair price cutting;
 - tie-in sales;
 - exclusive dealing;
 - interference with a competitor's transaction;
 - abuse of a dominant bargaining position.

Abuse of a dominant bargaining position is subject to administrative fines. Private monopolies are subject to criminal fines or imprisonment.

The AMA can apply to foreign entities and transactions outside Japan if they have an effect on the Japanese market.

25. Are mergers and acquisitions subject to merger control?

Stock acquisitions are subject to a prior notification obligation if the following conditions are met:

- The stockholding ratio after the transaction either:
 - rises from below 20% to above 20%; or
 - rises from between 20% and 50% to above 50%.

- The aggregate domestic sales of all companies within the combined business group of the acquiring corporation exceeds JPY20 billion.
- The aggregate domestic sales of the target corporation and its subsidiaries exceeds JPY5 billion.

Domestic sales is defined as the total price of goods or services supplied in Japan during the latest fiscal year. A combined business group consists of the ultimate parent company and all of its subsidiaries. A corporation is considered to be a subsidiary not only when more than 50% of the voting rights of the corporation are held by another corporation, but also if its management is controlled by the other corporation. A merger between companies in the same combined business group is not reportable.

The same threshold is used, regardless of the jurisdiction in which an acquiring corporation or a target corporation is established. Foreign-to-foreign acquisitions are subject to the AMA if they meet the threshold above. There are no foreign exemptions.

Business transfers are also subject to a prior notification obligation if the following conditions are met:

- The aggregate domestic sales of all corporations within the combined business group of the acquiring corporation exceeds JPY20 billion.
- The aggregate domestic sales attributable to the transferring business exceeds JPY3 billion.

The same threshold is used regardless of the jurisdiction in which an acquiring corporation or a target corporation was established. Foreign-to-foreign acquisitions are subject to the AMA if they meet the threshold above. There are no foreign exemptions.

INTELLECTUAL PROPERTY

26. What are the main IP rights capable of protection?

Patents

Nature of right. To be protected, a patent of a product, a process, and a process for producing a product must:

- Be novel.
- Involve an inventive step.
- Be capable of industrial application.

A patent owner has the exclusive right to prevent others from using, offering for sale, selling or importing the patented article or process without his consent.

Protection. Patents must be registered with the Japan Patent Office (JPO).

Enforcement. A patent owner can bring an infringement action in a court. Courts are responsible for enforcing patent rights and can impose the following penalties:

- Injunctions.



- Damages.
- Restoration of the patent owner's business reputation damaged through the infringement.
- Destruction of articles or facilities related to the infringement.
- Imprisonment with work for a term not exceeding ten years, a fine not exceeding JPY10 million or a combination of the two.

Length of protection. Protection lasts for 20 years from the day when an application is filed. A limit of five years applies to pharmaceutical products and agricultural chemicals, but this period can be extended.

Utility model

Nature of right. Japan has a two-tier patent system:

- **The Patent Act.** The Patent Act covers the exclusive right to inventions based on technical ideas using natural laws.
- **The Utility Models Act.** The Utility Models Act covers the exclusive right to devices based on technical ideas using natural laws in connection with a device's shape, structure, or a combination of the two.

The only differences between the two Acts are the objects covered and the technical idea level. The Utility Models Act is narrower and the technical level lower than the Patent Act. An idea for a method is not a valid subject.

Protection. Utility models must be registered with the JPO.

Enforcement. The remedies available are the same as for patents (*see above, Patents*).

Length of protection. Protection lasts for ten years from the day when an application was filed.

Trade marks

Nature of right. Trade marks are generally based on the concept of first registration. A trade mark can consist of:

- Words.
- Figures.
- Symbols.
- Colours.
- Three-dimensional shapes.
- A combination of the above.

To be registered, a trade mark must be distinctive enough for the relevant consumers to identify the marked goods or services and differentiate them from goods or services offered by others. After registration, the trade mark owner has the exclusive right to use the mark and prohibit any third parties from registering and using an identical or similar trade mark on similar goods or services in Japan.

Protection. Applications for trade mark registration must be filed with the JPO. Unregistered trade marks can be partially protected under the Unfair Competition Prevention Act if the trade marks are well known.

Enforcement. A patent owner can bring an infringement action in a court. Courts are responsible for enforcing patent rights and can impose the following penalties:

- Injunctions.
- Damages.
- Destruction of articles or facilities related to the infringement
- Imprisonment with work for a term not exceeding ten years, a fine not exceeding JPY10 million or a combination of the two.

Length of protection. Protection lasts for ten years from the day of registration (continuous use can be obtained if an application is updated).

Registered designs

Nature of right. To be protected, registered designs must:

- Be novel.
- Be capable of industrial application.
- Not be easy to create.

Registered designs can include shape, pattern, colour, and other design characteristics of items relating to their external appearance. A simple picture or drawing is not a valid subject.

Protection. Applications for design registration must be filed with the JPO.

Enforcement. The remedies available are the same as for patents (*see above, Patents*).

Length of protection. Protection lasts for 20 years from the date of registration.

Unregistered designs

Nature of right. Unregistered designs can be partially protected under the Copyright Act and under the Unfair Competition Prevention Act. Registration is not necessary.

Enforcement. An infringed unregistered design owner can apply to a court for the removal of the infringing work and/or damages under the Copyright Act and can apply to the court for an injunction and/or damages under the Unfair Competition Prevention Act. See also *Copyright* and *Confidential information* below.

Length of protection. As a copyrighted work under the Copyright Act, protection lasts for:

- 50 years from the death of the natural author.
- 50 years from the date when the design is released publicly, if the author is not a natural person.

Under the Unfair Competition Prevention Act, unregistered designs can be partially protected as long as the protection requirements are satisfied.

Copyright

Nature of right. Original works of authorship are protected as expressions fixed in a tangible medium. This includes:

- Literary works.
- Musical works.
- Dramatic works.
- Pictorial works.
- Graphic works.
- Cinematic and other audiovisual works.
- Sound recordings.
- Architectural works.

The copyright owner has the exclusive right to reproduce a copyrighted work, prepare derivative works based on a copyrighted work, distribute copies of a copyrighted work, publicly perform a copyrighted work and publicly display a copyrighted work.

Protection. Copyright arises automatically and no registration is necessary under the Copyright Act when a work is created. Japan has a registration system of assignment of copyrighted works, which is necessary to assert an assignment of copyright against a third party. However, the registration system has not been popular so far. Some assignments of computer programs and musical works are registered with the Agency for Cultural Affairs or the Software Information Centre (SOFTIC) in the case of computer programs.

Enforcement. If copyright is infringed, a copyright owner can apply to a court for the removal of the infringing work and/or damages. In addition, if the author's moral rights are infringed, he can apply to the court for:

- The inclusion of his name on the infringing work.
- Correction of the content of the work.
- Adoption of other appropriate measures necessary to restore his reputation.
- Damages.
- The infringer to be imprisoned with work for a term not exceeding ten years, fined an amount not exceeding JPY10 million or a combination of the two.

Length of protection. Protection lasts for:

- 50 years from the death of the natural author.
- 50 years from the date when the work is released publicly, if the author is not a natural person.
- 70 years for cinematic works.

Confidential information

Nature of right. Confidential information can be a trade secret protected under the Unfair Competition Prevention Act. Trade secrets include any production method, sales system, or other useful technical or operational information related to a business activity. To be protected, trade secrets must:

- Not be known to the public.

- Be kept in confidence.
- Be useful and/or important.

Protection. Trade secrets are protected by courts and by confidentiality measures taken by the owner, such as a non-disclosure agreement. No registration is required.

Enforcement. If a trade secret is infringed, the trade secret owner can apply to the court for an injunction and/or damages.

The Unfair Competition Prevention Act prohibits the unauthorised use and disclosure of commercial secrets. A person who violates provisions under the Act can be imprisoned with work for a term not exceeding ten years, receive a fine not exceeding JPY10 million or a combination of the two.

Length of protection. Trade secrets can be protected as long as the protection requirements are satisfied.

MARKETING AGREEMENTS

27. Are marketing agreements regulated?

Agency

Agency agreements are generally regulated by the Companies Act, the Commercial Code and the Civil Code. In addition, agents in certain businesses (for example, travel and insurance) are regulated by specific laws.

Distribution

Distribution of certain products (for example, pharmaceuticals, alcohol and tobacco) are regulated by specific laws.

Franchising

There is no specific law for franchising, but the following regulations apply to franchising:

- The Medium and Small Retail Commerce Promotion Act regulates a disclosure obligation.
- The Franchise Guideline under the AMA regulates the offer and sale of franchises.
- The Japan Franchise Association has its voluntary rules.

E-COMMERCE

28. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

The Act on Electronic Signatures and Certification Business regulates the following things:

- The scope of electronic signatures.
- The requirements for effective electronic signatures.
- Certification services in connection with electronic signatures.



The Act on Special Provisions for the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice specifies special rules for electronic consumer contracts in regard to the following items:

- The effects of a consumer's mistake when entering into electronic consumer contracts.
- The requirements for distant transactions.

The Ministry of Economy, Trade and Industry, updates the Interpretative Guidelines on Electronic Commerce and Information Property Trading regularly. The Guidelines are often referred to in business.

The Act on Specified Commercial Transactions regulates mail order sales including e-commerce. The Act specifies requirements on the content and method of advertising, including e-mails, such as the opt-in rule.

The Act on Regulation of Transmission of Specified Electronic Mail:

- Prohibits various conduct relating to the transmission of unsolicited commercial e-mails.
- Imposes requirements on the content of unsolicited commercial e-mails.
- Requires that recipients be provided with an address to opt-out of receiving further e-mails from a particular sender.

DATA PROTECTION

29. Are there any data protection laws?

Under Japanese law, privacy is protected. It is generally understood that infringement of privacy requires an infringing party to pay compensation to an infringed party (*Article 709, Civil Code*).

In addition, the Personal Information Protection Act (PIPA) sets forth general rules on handling personal information by the private sector in Japan. For example, under the PIPA, the purposes for which personal information is used must be identified by a company in advance. It is prohibited to use personal information beyond such identified purposes (*Article 15, paragraph 1* and *Article 16, paragraph 1, PIPA*). The purposes of use must be notified to the individuals whose personal information has been collected, before or promptly after collection (*Article 18, paragraph 1, PIPA*).

If a company transfers personal data to third parties (including group companies), the company must obtain consent from the individual to whom the personal information relates, in advance, unless one of the exceptions to this rule applies (*Article 23, paragraph 1, PIPA*). Adequate security measures must be implemented to prevent any leakage or misuse of personal data (*Articles 20 to 22, PIPA*).

PRODUCT LIABILITY

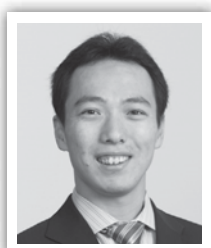
30. Are there any laws regulating product liability and product safety?

The Product Liability Act imposes strict liability on a manufacturer of defective products and covers manufactured or processed items of movable property. Under this Act, as long as the consumer can prove the existence of a defect, the manufacturer bears the burden of proving they were not negligent.

Until the enactment of the Product Liability Act in 1994, courts generally required consumers to prove the negligence of manufacturers based on the theory of tort liability under the Civil Code.



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Areas of practice. M&A; corporate transactions; real estate; sport; entertainment.

Recent transactions

- Acted on a number of investments by foreign companies into Japan, including takeovers, share acquisition, joint ventures, global M&A transactions and integration, and general corporate matters.
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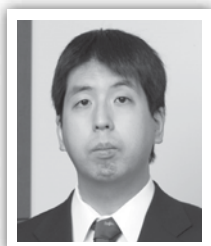
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Areas of practice. Labour law; pensions; data protection; M&A; corporate law; litigation.

Recent transactions

- Advised domestic and foreign clients on numerous labour-related issues such as redundancy and reconstruction of benefit schemes.
- Assisted domestic and foreign clients with labour disputes.
- Contributed practical advice to domestic and foreign clients which handle personal information and proprietary information in the course of their business.



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Recent transactions

- Advising a large US TV broadcasting corporation in a big copyright infringement case.
- Representing several large video and online game developers and manufacturers in international disputes including copyright infringement cases.
- Advising potential foreign investors in the broadcast and telecommunications sectors.
- Regularly advising on regulatory and commercial aspects of several international new distribution platforms and internet ventures.
- Assisting a famous writer to exclude unauthorised use of fictional characters on the internet.



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- Advising one of the largest automotive corporations on taxation of IP and transfer pricing issues.
- Advising a manufacturing company regarding the establishment of regional headquarters in Singapore.
- Representing one of the largest investment funds in various types of litigation.
- Advising multinational conglomerates on corporate reorganisations and taxations.
- Advising private companies as well as government bodies on international trades, customs and duties.