Private Client

Contributing editors
Anthony Thompson and Nicole Aubin-Parvu

2019

GETTING THE DEAL THROUGH

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Private Client 2019

Contributing editors

Anthony Thompson and Nicole Aubin-Parvu

Forsters LLP

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Preface

Private Client 2019

Seventh edition

Getting the Deal Through is delighted to publish the seventh edition of *Private Client*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Andorra, Colombia, Ireland, Netherlands, Panama, Singapore and Spain.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

London
October 2018

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Japan

Kenichi Sadaka and Akira Tanaka

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Tax

1 How does an individual become taxable in your jurisdiction?

The main tax imposed on incomes of individuals is income tax under the Income Tax Act of Japan. An individual's taxability is generally determined by the location of his or her residence and source of income.

A resident individual is defined as a natural person who is domiciled in Japan or a natural person who has resided in Japan continuously for more than one year. Resident individuals are further classified into permanent residents and non-permanent residents. A non-resident individual is defined as a natural person other than a resident individual. Income taxation for these groups is applied as follows:

- permanent resident individuals are taxed on a worldwide income basis. Non-Japanese citizens residing in Japan are presumed to be permanent residents when they have resided in Japan for a cumulative period of five years (measured within a 10-year time period). Japanese citizens are presumed to be permanent residents from the moment they reside in Japan;
- non-permanent resident individuals are subject to Japanese taxation with regard to Japan-sourced income and non-Japan-sourced income paid in or remitted to Japan. Non-Japanese citizens who have resided in Japan for less than five years on a cumulative basis (measured within a 10-year time period) are treated as non-permanent resident individuals; and
- non-resident individuals are taxed on Japan-sourced income only.

Upon the death of a decedent, inheritance tax will be imposed on the legal heirs and the testamentary donees (in this tax section, the word 'testamentary donees' shall refer to individuals entitled to receive testamentary gifts, irrespective of whether they are the legal heirs, and shall not include any legal entities) under the Inheritance Tax Act of Japan. The taxability of legal heirs and testamentary donees of decedents is generally determined by the location of their residence, their nationality, the location of the decedent's residence and the location of the assets. The 2017 tax reform has amended the rules concerning the taxability of legal heirs and testamentary donees of decedents in order to achieve two goals:

(i) preventing wealthy people, mainly Japanese people who lived in Japan for so many years, from avoiding inheritance tax imposed by the Japanese government; and
(ii) encouraging foreign people, especially highly skilled foreign professionals, to live and work in Japan without being too concerned about inheritance tax in Japan.

To achieve (i), the 2017 tax reform has made it difficult to meet the requirements for benefiting from limited taxability, which may be applicable to assets located outside Japan. On the other hand, in order to achieve (ii), the 2017 tax reform has introduced a relief for foreigners who hold a work-related visa and temporarily (which means less than 10 years' living in total in Japan within 15 years preceding his or her death) reside in Japan. The effect of such reform is that assets located outside Japan that are owned by such foreigners are exempt from the inheritance tax of Japan even if the foreigners pass away during their stay in Japan and thus are presumed to be permanent resident individuals. In addition, the 2018 tax reform has introduced a relief for foreigners who lived in Japan for more than 10 years and then left Japan, in order to eliminate a disincentive for highly skilled professionals to live and work in Japan. The effect of such reform is that assets located outside Japan that are owned by such foreigners are, in principle, exempt from the inheritance tax of Japan, even if the foreigners pass away within five years of leaving Japan.

2 What, if any, taxes apply to an individual's income?

In addition to income tax referred to in question 1 (imposed at a national level), a special reconstruction tax (also imposed at a national level), equivalent to 2.1 per cent of income tax, is payable from 1 January 2013 to 31 December 2037. Local inhabitant taxes will also apply to an individual's income if the individual resides in Japan. There are two categories of local inhabitant taxes: one at the prefectural level and the other at the municipal level. The tax base for income tax and local inhabitant taxes are almost identical. The overall income-based tax rate (including national tax and local taxes) is progressive and reaches a maximum rate, which is currently 55.945 per cent (comprising a 45 per cent income tax rate, a 0.945 per cent special reconstruction tax rate and a 10 per cent local inhabitant tax rate).

In the case of an individual entrepreneur operating a business in Japan, a local enterprise tax will also be imposed on his or her business income by the prefectural tax authority where his or her office is located. The applicable tax rate differs based on the category of business operated by the sole entrepreneur, as well as the location of his or her office, but generally ranges between 3 and 5 per cent.

3 What, if any, taxes apply to an individual's capital gains?

Capital gains are derived from the sale of assets. Assets from the viewpoint of capital gains include real properties, land lease rights, shares of corporations, certain kinds of bonds, gold bullion, jewels, vessels and ships, machines and equipment, golf course membership and intellectual property.

Income tax at the national level and local inhabitant taxes are applicable to capital gains. Tax preferential treatments are available for certain capital gains, such as gain as a result of the rise in value of shares of corporations. With regard to individuals, capital gains derived from the sale of shares or derived from the sale of bonds are taxed at the rate of 20.315 per cent (comprising a 15 per cent income tax rate, a 0.315 per cent special reconstruction tax rate and a 5 per cent local inhabitant tax rate) until 31 December 2037. Capital gains derived from the sale of real property will be subject to tax at the rate of 20.315 per cent (comprising a 15 per cent income tax rate, a 0.315 per cent special reconstruction tax rate and a 5 per cent local inhabitant tax rate) from the present, up to 31 December 2037 if the real property is held for more than five years. Reduced tax rates will be applicable to capital gains derived from the sale of land for residential purposes if certain requirements are met. Capital gains derived from the sale of real property held for five years or less will be taxed at 39.63 per cent (comprising a 30 per cent income tax rate, a 0.63 per cent special reconstruction tax rate and a 9 per cent local inhabitant tax rate).

In order to prevent wealthy resident individuals from avoiding tax on capital gains by moving out of Japan with appreciated financial assets (eg, securities), and subsequently selling those assets overseas, the 2015 tax legislation has amended the Income Tax Act of Japan and introduced a new 'exit tax', which imposes income tax on unrealised

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capital gains on certain financial assets at the time of departure. Under the new rule, a resident individual is subject to income tax on capital gains on financial assets at the time of their departure (as if the individual sold the securities or settled the derivative transactions at the fair market value) if he or she satisfies both of the following conditions:
- the total value of certain financial assets held by the person as of departure from Japan is ¥100 million or more; and
- the person has lived in Japan for more than five of the last 10 years prior to departure.

For a similar purpose, income tax shall also be imposed on unrealised capital gains on certain financial assets if a resident individual who satisfies the conditions stated above donates certain financial assets to non-residents, or if a resident individual who satisfies the conditions stated above dies and, in a succession procedure, his or her legal heirs and testamentary donees who are non-residents of Japan come to acquire the financial assets.

4 What, if any, taxes apply if an individual makes lifetime gifts?

If an individual makes lifetime gifts, different tax consequences will arise between:
(i) an individual who makes gifts to another individual; and
(ii) an individual who makes gifts to a legal entity.

In the case of (i), the recipient of gifts will be subject to a gift tax under the Inheritance Tax Act of Japan. As set out in the table below and the table in question 5, the gift tax rate is much higher than the inheritance tax rate. When certain requirements are met (such as where the provider of the gift is a parent or grandparent who is aged 60 or older and the recipient of the gift is at least 20), the recipient can elect to enjoy the reduced gift tax rate and to credit such gift tax against the inheritance tax after the death of the decedent.

A provider of gifts will not generally be subject to tax. However, if the recipient of gifts does not pay the gift tax, the provider of gifts will be jointly liable.

The present gift tax rate is as follows (although it should be noted that reduced rates are applicable to gifts from lineal ascendants to lineal descendants who are 20 years of age or older).

Tax base after basic deduction* applicable to all gifts	Tax rate (%)
¥2 million or less	10
¥3 million or less	15
¥4 million or less	20
¥6 million or less	30
¥10 million or less	40
¥15 million or less	45
¥30 million or less	50
More than ¥30 million	55

* Basic deduction is ¥1.1 million (ie, no tax is payable for gifts of amounts up to ¥1.1 million).

In the case of (ii), the recipient legal entity will be subject to corporate income tax. The tax base is fair market value of the gifts. The individual provider of gifts is also subject to income tax (deemed capital gains tax) if the gifts provided are property other than cash. The tax base is unrealised capital gains (ie, the fair market value less acquisition costs and other related expenses). However, if the recipient legal entity falls within the category of certain charities, deemed capital gains tax will not be levied.

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

If an estate is gifted to a legal entity on the death of the testator, the recipient legal entity and the individual testator will be subject to corporate income tax and deemed capital gain tax, respectively, in the same manner set forth in (ii) in question 4. The tax obligation of the individual testator will be borne by his or her heirs.

Inheritance tax will be imposed upon each of the legal heirs and testamentary donees and not upon the estate itself. The following sets out the method of calculating inheritance tax where an estate is gifted to individuals and inheritance tax is payable.

The basic calculation method of inheritance tax is as follows:
(i) the tax base must be determined. The total value of the estate less debts incurred by the decedent, untaxable properties and costs incurred for the funeral plus gifts made within three years of death will be the tax base;
(ii) a deduction of ¥30 million and ¥6 million multiplied by the number of legal heirs will be applied to the tax base. Legal heirs in this case include illegitimate children and adopted children. However, there are certain restrictions on the number of adopted children who may be included in this calculation in order to prevent inheritance tax avoidance;
(iii) assuming that the tax base determined in (i) and (ii) above is divided among the legal heirs pursuant to the legal inheritance ratio provided in the Civil Code of Japan (see question 18), the total inheritance tax amount to be imposed is then calculated. The inheritance tax amount is allocated based on the actual assets acquired by each of the heirs and the testamentary donees. If the amount of the assets acquired by a certain legal heir is more (or less) than his or her legal inheritance ratio, then the inheritance tax to be imposed upon him or her will increase (or decrease) accordingly, although the total amount of the inheritance tax to be imposed upon all the legal heirs will, in principle, remain the same as where the division is faithful to each legal heir's legal inheritance ratio;
(iv) in calculating the inheritance tax amount, special deductions or exemptions are available. In particular, the surviving spouse can be exempted if the amount of the assets he or she acquires is less than ¥160 million or the amount of the spouse's legal inheritance ratio. If gift tax has already been paid for gifts made within three years of death, such gift tax is creditable against the inheritance tax to be paid by the gift tax payer. On the other hand, a person who receives assets by inheritance or testament who is not a spouse or a first-degree family member (including an heir per stirpes set out in question 18) of the decedent will be liable for an additional 20 per cent of inheritance tax; and
(v) as stated above, inheritance tax is imposed upon each of the heirs and testamentary donees of a decedent. However, in the event that a certain heir or a testamentary donee does not pay the inheritance tax due, the other heirs and testamentary donees are severally and jointly liable to a certain extent.

The current basic inheritance tax rates are as follows.

Tax base after applicable deduction	Tax rate (%)
¥10 million or less	10
¥30 million or less	15
¥50 million or less	20
¥100 million or less	30
¥200 million or less	40
¥300 million or less	45
¥600 million or less	50
More than ¥600 million	55

It should be noted that preferential tax treatments apply to cases of inheritance involving business succession. Such preferential treatment is intended to facilitate business succession by reducing the inheritance tax burden. This treatment may be applied to the inheritance of medium to small-sized businesses (defined as, for example, a business of which the stated capital is a specified amount or less and the number of employees is a specified number or less). Under such preferential treatment, 80 per cent of the inheritance tax will be deferred upon certain requirements being met (such as the approval of the Minister of Economy, Trade and Industry being obtained, the decedent being the representative of the business who held at least 50 per cent of the shares or interest in the business and the heir or the testamentary donee succeeded the business as such a representative). In addition to the above preferential tax treatment, the 2018 tax reform has introduced a more preferential tax regime for business succession which applies to shares donated or inherited until 31 December 2027. Under

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this tax regime, 100 per cent of the inheritance tax will be deferred upon certain requirements being met (such as a submission of business succession plan to the prefectural government).

6 What, if any, taxes apply to an individual's real property?

Upon acquisition, a real property acquisition tax will be imposed. The tax rate is generally 3 or 4 per cent. Upon registration, a registration and licence tax will be imposed. The tax rate varies depending on the type of registration made. For example, if the registration relates to the transfer of ownership, the tax rate is 2 per cent of the value of the real property (reduced tax rates may apply depending on the type of real property, eg, land, dwelling house). If the ground for the acquisition of real property is inheritance, inheritance tax will be imposed as described above and registration and licence tax will also be imposed (the tax rate is 0.4 per cent of the value of the real property), while the real property acquisition tax will not be imposed.

In the period in which real property is held, a fixed assets tax will be imposed generally at the rate of 1.4 per cent of the value of such real property. Various tax preferential treatments are available for a fixed assets tax. In addition, real property located in certain areas, such as Tokyo, will be subject to urban planning tax at the rate of 0.3 per cent of the value of real property.

When disposing of real property, a capital gains tax (income tax and local inhabitant tax) will be imposed, as stated in question 3.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

There are neither taxes nor duties on exportation in Japan.

Regarding importation, customs and duties are levied depending on the goods to be imported into Japan. In addition, upon importation, a consumption tax will be levied at a rate of 8 per cent (the tax rate will increase to 10 per cent on or after 1 October 2019).

The rates of customs and duties are provided in the Customs Tariff Act of Japan. Certain economic partnership agreements (EPAs) to which Japan is a signatory (such as with Indonesia, Malaysia, Singapore, Thailand, Vietnam, other Association of Southeast Asian Nations' countries, Chile, India, Mexico and Switzerland) provide preferential treatment in terms of tariff rates. The customs and duties are applicable regardless of the purpose of importation (ie, duties and customs are applicable even if the importation is for personal use and enjoyment). However, if goods are imported using the general cargo or postal package and the value of such goods is less than ¥200,000, a simplified tariff code will be applied. No customs and duties are payable on imported goods that have a value of ¥10,000 or less, except alcohol and cigarettes.

8 What, if any, other taxes may be particularly relevant to an individual?

Consumption tax (the present rate of which is 8 per cent, but on or after 1 October 2019 will increase to 10 per cent) may be relevant to an individual. The payer of consumption tax is:

- a person or a legal person who, as a business, with consideration, sells or leases assets and provides services within Japan; or
- a person or a legal person who receives goods from a bonded area.

Therefore, an individual who purchases goods or receives services is not a taxpayer under the Consumption Tax Act of Japan. Generally speaking, such an individual simply bears the economic burden of the consumption tax passed onto consumers by businesses.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

For Japanese tax purposes, there are generally three types of trusts:

(i) transparent type trusts;
(ii) non-transparent type trusts; and
(iii) corporate trusts.

Transparent type trusts are disregarded in the taxation process and the beneficiaries may directly obtain gains and losses at the time such gains and losses are realised (ie, gains and losses attributable to the trust are considered to be gains and losses of the beneficiaries). All trusts other than trusts classified into (ii) and (iii) are included in this category.

Beneficiaries of non-transparent type trusts are taxed at the time when the distribution of profits is made to the beneficiaries. This type of trust includes collective investment trusts, retirement pension trusts and qualified public interest trusts.

The treatment of corporate trusts is largely similar to the treatment of ordinary corporations. Therefore, corporate trusts are taxable entities. Corporate trusts include certain securities-issued trusts, trusts with no beneficiaries, certain trusts the trustee of which is a corporation, and certain specific purpose trusts.

10 How are charities taxed in your jurisdiction?

There are various types of charities recognised in Japan, as long as the respective legal requirements are met. Generally speaking, charities are tax-exempt entities, including the donations and charitable contributions they receive (see questions 4 and 5). However, if such charities have certain premises established as an office and continuously conduct business in certain areas for profit as stipulated in the Corporate Tax Act of Japan, such businesses are taxable to the extent profits are derived from such businesses. Such businesses include the sale of goods and real properties, money lending, leasing of real property, manufacturing, communication services, transportation, warehousing, printing, publishing, photography, the hotel industry, agency, commissionaire-related businesses, restaurants, mining, hairdressing, medical insurance businesses and the provision of parking spaces.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

Trusts are recognised in Japan, and are regulated by the Trust Act. In general, trusts can be established by settlors transferring their properties to trustees who then hold legal title to the properties for the benefit of the beneficiaries, who may or may not be the settlors. Trust properties, the legal title of which has been transferred from settlors to trustees, become remote from the settlors' bankruptcy. If the property to be transferred to a trustee falls under a category of assets that are capable of being registered in Japan (such as real property and patents), then the transfer of titles to such assets must, for purposes of perfection against third parties, be registered.

Trustees manage or dispose of trust property in accordance with certain trust objectives, and carry out the necessary acts to achieve such objectives in accordance with the trustees' duties (such as the duties of care and loyalty). Although trust properties are incapable of being legal entities, they must be segregated from trustees' own properties, and must be kept free from seizure by trustees' own creditors and bankruptcy. There are three methods by which to establish a trust in Japan:

- a trust established by way of a contract between the settlor and trustee;
- a trust established by way of the will of a settlor; and
- a trust established by way of a declaration (where the settlor declares, in a notarised deed or such other prescribed form, that it manages or disposes of property in accordance with certain objectives and carries out the necessary acts to achieve such objectives).

Additionally, trusts governed by the laws of another jurisdiction may be recognised in Japan (although the validity of such trusts is ultimately determined by a Japanese court in the event of disputes regarding these trusts).

12 Does your jurisdiction recognise private foundations?

A general incorporated foundation (GIF), which is a legal personality, can be established under the Act on General Incorporated Associations and General Incorporated Foundations. There are no limits to the objectives of a GIF, whose objectives can be driven by, among others, public interest, mutual benefit for specified members and commercial purposes, as long as such objectives are legal. A GIF can be established by one or more founders contributing ¥3 million or more. A founder can also establish a GIF by way of a will, in which case the executor carries out the procedures necessary to establish the GIF. A GIF can be operated by a representative director or an operating director depending on the determination of a board of directors. A board of councillors determines certain fundamental matters in relation to the GIF (such as the election of directors and amendments to the GIF's articles of incorporation) in accordance with applicable law or the GIF's articles of incorporation.

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Private foundations governed by the laws of another jurisdiction may also be recognised in Japan (although the validity of such foundations is ultimately determined by a Japanese court in the event of disputes regarding the foundations).

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

In Japan, a same-sex marriage is treated as invalid. If a person with gender identity disorder changes their gender pursuant to the Gender Identity Disorder Act, then the person may enter into a marriage with a person who is biologically the same sex as the person was before they changed their gender. The Gender Identity Disorder Act provides the requirements for a person with gender identity disorder to legally change their gender. The requirements are as follows:

- the person is at least 20 years old;
- the person is unmarried at the time they wish to legally change their original gender;
- the person does not have a child under 20 years old;
- the person does not have reproductive organs or reproductive ability; and
- the person has external genital organs similar to the opposite sex.

These requirements may be hard for a person with gender identity disorder to satisfy.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code of Japan (ie, a spouse in a marital relationship). Accordingly, a person in a same-sex relationship is not eligible for tax benefits granted for a spouse or a marital relationship, such as spouse tax deductions under the Income Tax Act and a spouse's amount of tax reductions under the Inheritance Tax Act (see (iv) at question 5).

It should be noted, however, that some progressive movements in relation to same-sex marriage have been occurring at local government level. In March 2015, Shibuya Ward, a ward in Tokyo, enacted the same-sex partnership ordinance. Under this ordinance, Shibuya Ward issues a 'partnership certificate' to same-sex couples who satisfy certain requirements, and then such same-sex couples may be treated by Shibuya Ward and business operators located in it as equivalent to a formally married couple, in limited situations. However, such same-sex couples are not treated as married couples within the meaning of the Civil Code of Japan and, accordingly, they do not receive the same legal protection as married couples. Such progressive movements have gradually been expanding to other local governments, including Setagaya Ward, another ward in Tokyo, which enacted an ordinance that prohibits discrimination against LGBT people on 2 March 2018. However, some people continue to object to same-sex marriage by referring to article 24 of the Constitution of Japan, which provides: 'Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.'

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

In Japan, heterosexual couples who intend to marry are required to submit a marriage notification to a government office in order for the marriage to be formally admitted as a marital relationship under Japanese law. If heterosexual couples live together with an intention to marry but have not submitted a marriage notification, the relationship is not treated as a marital relationship but as a de facto marriage. Although to a limited extent, such couples are also eligible for protections and obligations that are substantially similar to those provided for a marital relationship, for example:

- if a de facto marriage is terminated without justifiable reasons, the terminated party to the de facto marriage may seek damages against the terminating party;
- if a de facto marriage is terminated, a party may ask the other party to distribute community property and joint property;
- partners to the de facto marriage shall share expenses that arise from the relationship, taking into account their property, income and all other circumstances; and
- for social security purposes, it is often the case that a de facto marriage is treated the same as a marital relationship (eg, a partner to a de facto marriage is eligible to obtain pensions and industrial injury insurance after the death of the other party).

However, there is a big difference between marriage and de facto marriage: a partner to a de facto marriage is not treated as an heir. That said, it is possible to give an estate to the partner by way of testament.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code of Japan (ie, a spouse in a marital relationship). Accordingly, a partner to a de facto marriage is not eligible for tax benefits granted for a spouse or a marital relationship, such as spouse tax deductions under the Income Tax Act and a spouse's amount of tax reductions under the Inheritance Tax Act (see (iv) at question 5).

Succession

15 What property constitutes an individual's estate for succession purposes?

In principle, any and all rights and duties attached to the property of the decedent, including a legal title to tangible and intangible property and co-ownership interest in property, claims and obligations, are succeeded to at the time of the death of the decedent. This, however, shall not apply to rights or duties of the decedent that are purely personal, such as the right to welfare or public assistance.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

In principle, individuals may make any and all dispositions over their estate, whether by sale or through gifts, during their lifetime, except where such disposition is against public policy (eg, a lifetime gift for the purposes of maintaining an adulterous relationship) and should be considered void. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so request, the recipient must return the gift or make compensation for the value of the gift to the extent required by the Civil Code of Japan. For details of the statutory reserved share, see question 25.

17 To what extent do individuals have freedom of disposition over their estate on death?

In principle, individuals have testamentary freedom over their estate, except in cases where such disposition is against public policy. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so request, the recipient must return the gift or make compensation for the value of the gift to the extent required by the Civil Code of Japan. For details of the statutory reserved share, see question 25.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

If the intestate decedent is survived by his or her spouse, such spouse shall, in principle, always be an heir. As to other heirs, it depends who survives the decedent.

Intestate decedent survived by spouse and children

In this case, the spouse and the children of the decedent become heirs. If the decedent is survived by his or her spouse and one or more children, the surviving spouse takes half of the estate and the surviving children take the other half in equal shares. If any of the decedent's children has died prior to the death of the decedent, or has lost the right to inheritance by disqualification or disinheritance, and if any of his or her lineal descendants is surviving, then such lineal descendant (ie, a grandchild or a further descendant of the decedent) will be an heir per stirpes.

Intestate decedent survived by spouse and lineal ascendants with no surviving children

The lineal ascendants of the decedent, such as his or her father or mother, may become heirs only if the decedent has no children (and no heirs per stirpes). In this case, the surviving spouse takes two-thirds of the estate and the surviving lineal ascendants take one-third of the estate in equal shares.

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Intestate decedent survived by spouse and siblings with no surviving children or surviving lineal ascendants

The siblings of the decedent may become heirs only if the decedent has neither surviving children (and not heirs per stirpes) nor surviving lineal ascendants. If the decedent is survived by his or her spouse and siblings, the surviving spouse takes three-quarters of the estate and the surviving siblings take one-quarter of the estate in equal shares. If any of the decedent's siblings has died prior to the death of the decedent, or has lost the right to inheritance by disqualification or disinheritance, and if his or her children are surviving, then the child (ie, a nephew or a niece of the decedent) will be an heir per stirpes.

Special benefit and contributory portion

The above-mentioned shares of each heir are subject to adjustment by the amount of special benefit that heirs have already received from the decedent and the amount of contributory portion of heirs who have made a special contribution relating to the decedent's business, medical treatment or nursing of the decedent or other means.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted and illegitimate children are now treated in the same way as natural legitimate children. In the past, article 900 of the Civil Code stipulated that an illegitimate child was only entitled to half the estate to which a legitimate child is entitled. There were, for many years, strong criticisms of the fairness of this clause, and the Supreme Court of Japan finally decided on 4 September 2013 that this unequal treatment was in violation of article 14 of the Constitution of Japan, which provides for equal protection for all. After this Supreme Court decision, article 900 was formally amended in December 2013, and the distinction between the legitimate child and the illegitimate child was abolished.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

It depends on the nationality of the decedent. If the decedent's nationality is Japanese, the Civil Code of Japan governs the distribution of an individual's estate. The explanations in this 'succession' section are based on the Civil Code of Japan. Even if a foreign law governs the succession or distribution of an individual's estate because of the nationality of the decedent, the heirs, testamentary donees and the recipient legal entities who succeed to real property within Japan must complete its registration to perfect changes in rights through the procedure required by the laws of Japan.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

This depends on which law governs the formality of a will. Under Japanese law, a will is considered valid in its formality if it complies with:

- the law of the place where the act was performed;
- the law of the country where the testator had nationality, either at the time he or she made the will or at the time of his or her death;
- the law of the place where the testator is domiciled, either at the time he or she made the will or at the time of his or her death;
- the law of the place where the testator was habitually resident, either at the time he or she made the will or at the time of his or her death; or
- in the case of a will concerning real property, the law of the place where the real property is located.

If the Civil Code of Japan applies to a will in question, then (i) a holograph document, (ii) a notarised document or (iii) a sealed and notarised envelope document is considered valid in terms of formality.

With regard to (i), the testator must write the entire text, the date and his or her name in his or her own hand and affix his or her seal. (Please note that the testator will be allowed to prepare the list of assets by a word-processor after 2018 amendments will take into force as stated in 'Update and trends'.)

With regard to (ii), the following requirements must be satisfied:

- no fewer than two witnesses must be in attendance;
- the testator must give oral instruction of the tenor of the will to a notary public;
- the notary public must take dictation from the testator and read this aloud, or allow inspection, to the testator and witnesses;
- the testator and witnesses must each sign, and affix his or her seal to, the certificate after having approved its accuracy; and
- the notary public must give supplementary registration to the effect that the certificate has been made in compliance with the formalities listed in each of the preceding items, sign it, and affix his or her seal thereto.

With regard to (iii), the following requirements must be satisfied:

- the testator must sign and affix his or her seal to the certificate;
- the testator must seal the certificate and affix the same seal;
- the testator must submit the sealed certificate before one notary public and not less than two witnesses, with a statement to the effect that it is his or her own will, giving the author's name and address; and
- after having entered the date of submission of the certificate and the statement of the testator upon the sealed document, the notary public must, together with the testator and witnesses, sign it and affix his or her seal thereto.

Apart from a will, which is required to comply with considerable formality in order to be valid, it is possible to make a gift in the form of a gift agreement by and between a donor and a recipient, which becomes effective at the time of the donor's death. This gift agreement is required to comply with relatively lower standards of formality in order to be valid.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

The law of the nationality of the testator governs the execution and effect of foreign wills. In terms of the formality of wills, refer to question 21.

23 Who has the right to administer an estate?

Where there is only one heir and there is no will, he or she inherits the entire estate and is allowed to administer it. If there are two or more heirs and there is no will, most of the inherited estate, such as real estate, belong to those heirs in co-ownership, and such co-ownership is terminated only after it is decided which of the heirs should take which specific assets by the effect of an out-of-court agreement or the completion of a formal court procedure. Until such decision is made, those joint heirs administer the inherited estate. However, the family court may appoint, if it thinks it necessary to preserve such an estate, a manager of such estate.

Where there is a will, an executor, in principle, has the right and duty to administer the estate until the time the succession of the estate under the will is fully completed. An executor may be designated by the will itself, or be appointed by the family court.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

In principle, if a person dies intestate, his or her estate automatically and directly passes to heirs upon the commencement of the inheritance and, if there are two or more heirs, they will co-own the deceased's assets. However, a divisible claim such as a monetary claim, will not be co-owned, but will be automatically divided among those heirs. In this respect, the Supreme Court of Japan decided on 19 December 2016 that the court precedent which had treated bank deposits as divisible claims should be revoked and that bank deposits are not treated as divisible claims (see 'Update and trends' for more information). If a person dies testate, his or her estate will be passed to his or her heirs, testamentary donees and recipient legal entities in accordance with his or her will. For the process of the division and the rules for administration of the estate, refer to question 23.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Heirs other than siblings have statutory reserved shares. If only lineal ascendants are heirs, they have statutory reserved shares that are equal to one-third of the decedent's estate. In the other cases, heirs have

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Update and trends

Amendments to the inheritance rules
Considering the increasing aging population and changes to public awareness on issues concerning inheritance in Japan, amendments to the inheritance rules contained in the Civil Code of Japan have been discussed by the Japanese government. On 6 July 2018, an amendment bill to the Civil Code of Japan, which includes the following new rules, passed the Diet and was promulgated into law, and will come into force by 13 July 2019.

Measures to protect rights of the spouse of the deceased
To protect the spouse of the deceased, if one spouse donates a real property for residence to the other spouse who has been married for 20 years or more, such real property will be, in principle, excluded from estate of the deceased. As a result, such real property will not generally be subject to a division of the estate, and accordingly the spouse of the deceased will be able to receive a larger amount of assets included in the estate, in comparison with an amount receivable under the current rule.

Introduction of temporary payment rules concerning bank deposits of the deceased
As stated in question 24, the Supreme Court of Japan decided on 19 December 2016 that the court precedent that had treated bank deposits as divisible claims should be revoked and that bank deposits are not treated as divisible claims. Under the new court precedent, no heir is, in principle, able to withdraw deposits of the deceased before the division of the estate without obtaining consent from all the other heirs regardless of the necessity for withdrawing deposits to pay, for example, expenses for funeral services, which may cause some inconveniences. To address this issue, temporary payment rules will be introduced so that the court can issue a temporary order to grant partial withdrawal of deposits in a more flexible and expeditious manner than in the case of formal preliminary injunction procedures. A new measure will also be introduced so that heirs can withdraw certain small deposit amounts without obtaining consent from all the other heirs.

Plan to accept foreign unskilled workers
For a long time, Japan has adopted the immigration policy that it does not generally accept foreign unskilled workers. However, to sustain the growth of the Japanese economy and to resolve anticipated workforce shortage, the Japanese government intends to make pivotal changes to this policy. It is likely that the Japanese government will present to the Diet in this autumn a bill that amends the Immigration Control and Refugee Recognition Act in order to broadly accept foreign unskilled workers from April 2019.

statutory reserved shares that are equal to half of the decedent's estate. Heirs must claim for statutory reserved shares, in principle, within one year of having knowledge of the commencement of inheritance and the existence of a gift or of a testamentary gift to be abated.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

The legal capacity of a person to act is governed, in principle, by his or her national law. In the case of a Japanese citizen, the Civil Code of Japan will apply, under which a minor's act without the consent of his or her statutory agent (in principle, his or her parents) may be rescinded unless such act grants only a right or discharges his or her duty.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

Under the current Civil Code, an individual attains legal capacity for the purposes of holding and managing property at the age of 20. However, if a minor is married, he or she will be deemed to have attained majority. The minimum legal age of marriage for a man is 18 and for a woman, 16. A minor who is permitted to carry out business has the same capacity to act as a person who has reached the age of 20, as far as such business is concerned.

In June 2018, a bill of amendment to the Civil Code has passed the Diet. Under the revised Civil Code, an individual will attain legal capacity for the purposes of holding and managing property at the age of 18. The minimum legal age of marriage for a woman will be raised from 16 to 18. The revised Civil Code will take effect on 1 April 2022.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If someone loses the capacity to discern right and wrong due to any mental disability, the family court may order the commencement of guardianship upon the request of related parties. Acts of a person under guardianship may, in principle, be rescinded.

If a person's capacity to appreciate right and wrong is severely insufficient due to any mental disability, the family court may order the commencement of curatorship upon the request of related parties. A person under curatorship must obtain the consent of his or her curator if he or she intends to do important acts such as borrowing money. If there is no consent, acts of a person under the curatorship may, in principle, be rescinded.

If someone has insufficient capacity to appreciate right or wrong due to any mental disability, the family court may order the commencement of assistance upon the request of related parties. A person under assistance must obtain the consent of his or her assistant if he or she intends to do any particular act determined by the court. If there is no consent, such an act of a person under assistance may, in principle, be rescinded.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

In principle, a visa is required. However, if persons from certain visa waiver countries intend to visit Japan for certain purposes (eg, business, conference or sightseeing purposes) for a limited period of time, then a visa is not required.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

It depends on the status of the visitor. Examples of status and permitted terms are as follows:

Status	Term
Short stay	15, 30 or 90 days
Highly skilled foreign professional	Five years for highly skilled foreign professional (i); unlimited for highly skilled foreign professional (ii) – see question 31 for details
Business manager	Three or four months or one, three or five years
Researcher, instructor, engineer, specialist in humanities, international services, intra-company transferee	Three months or one, three or five years
Nursing care	Three months or one, three or five years
Spouse or child of Japanese national, spouse or child of permanent resident	Six months or one, three or five years
Permanent resident	Permanent

31 Is there a visa programme targeted specifically at high net worth individuals?

A designated activities long-stay visa for sightseeing and recreation became available from 2015. Under this visa, nationals and citizens of visa waiver countries or regions are entitled to stay in Japan for up to one year if they meet certain requirements, such as:

- the individual is aged 18 or older and has savings equivalent to more than ¥30 million owned by him or herself and his or her spouse;
- he or she will come as an accompanying spouse of the individual who is mentioned in the point above (they must have the same place of residence and travel together in Japan); and

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- the individual and the accompanying spouse have sufficient medical insurance to cover their stay in Japan.

In addition, significant developments were made to facilitate the acceptance of highly skilled foreign professionals in Japan. Further to the adoption of the points-based system in 2012, a new category of visa status, highly skilled foreign professionals, was formally introduced in 2015. The highly skilled foreign professionals visa has the following three sub-categories depending upon the activities of the foreign individuals:
- advanced academic research activities;
- advanced specialised or technical activities; and
- advanced business management activities.

In determining whether a highly skilled foreign professionals visa should be issued, the points-based system shall be used. For example, in the case of a foreign individual applying for the highly skilled foreign professionals (advanced specialised or technical activities) visa, if he or she is 30 years old, the amount of his or her promised annual salary is ¥10 million and he or she has a doctoral degree, then 10 points, 40 points and 30 points will be given for each element. The applicant may also earn points for other factors listed in the relevant ordinance, such as their academic background, professional career (research or business experience), age, achievements and qualifications. If the total points awarded are 70 or more, a highly skilled foreign professionals visa may be issued, in which case various types of preferential treatment will be available, including:
- permission for multiple-purpose activities during their stay in Japan (ie, permission not only for the intended professional activities, but also for other certain activities which are related to the intended professional activities but may require, in principle, other types of visas);
- the grant of a five-year period of stay;
- relaxed requirements for the grant of permission for permanent residence (from 10 years down to three years (one year if the total points awarded are 80 or more));
- preferential and expeditious processing of immigration and stay procedures;
- permission for a spouse to work;
- permission to bring a parent under certain circumstances; and
- permission for a domestic servant under certain requirements.

After engaging in activities as a highly skilled professional for three years or more, the foreign individual may be promoted from highly skilled foreign professional (i) (lower status) to highly skilled foreign professional (ii) (higher status), in which case additional preferential treatment will be available, including:
- permission for almost all activities during their stay in Japan (ie, permission not only for the intended professional activities, but also for other certain activities that are related or unrelated to the intended professional activities and require, in principle, other types of visas) in addition to those permitted under the Highly Skilled Foreign Professional (i) visa; and
- an unlimited period of stay.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

A holder of a designated activities long-stay visa for sightseeing and recreation, as outlined in question 31, may bring his or her spouse to Japan under certain circumstances. However, there is no special treatment for children.

A holder of the highly skilled foreign professionals visa may bring his or her spouse and children to Japan. Further, it is possible to bring his or her parent to Japan for certain reasons and under certain requirements, whereas a foreign national with an ordinary working immigration status is, generally, not allowed to.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Holders of the highly skilled foreign professionals visa who have engaged in the activities of a highly skilled person in Japan for approximately five consecutive years, may apply for a permanent resident visa. Further, holders of the highly skilled foreign professionals (ii) visa can stay in Japan indefinitely without changing visa status.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Not applicable.

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