

# PRIVATE CLIENT

## Japan



# Private Client

Consulting editors

**Anita Shah, Ludovica Rabitti, Ziva Robertson, Jennifer Ronz**

*McDermott Will & Emery*

---

Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

---

Generated 21 November 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

## Table of contents

### LEGAL FRAMEWORK

Key legislation  
Real property  
Establishing a business

### TAX

Residence and domicile  
Income  
Capital gains  
Lifetime gifts  
Inheritance  
Real property  
Non-cash assets  
Other taxes  
Trusts and other holding vehicles  
Charities  
Anti-avoidance and anti-abuse provisions

### TRUSTS AND FOUNDATIONS

Trusts  
Private foundations  
Disputes

### SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships  
Heterosexual civil unions

### SUCCESSION

Estate constitution  
Disposition  
Intestacy  
Adopted and illegitimate children  
Distribution  
Formalities

**Foreign wills**

**Administration**

**Challenge**

## **CAPACITY AND POWER OF ATTORNEY**

**Minors**

**Age of majority**

**Loss of capacity**

## **IMMIGRATION**

**Visitors' visas**

**High net worth individuals**

## **UPDATE & TRENDS**

**Key developments**

## Contributors

### Japan



**Kenichi Sadaka**  
kenichi.sadaka@amt-law.com  
*Anderson Mōri & Tomotsune*

ANDERSON MŌRI & TOMOTSUNE



**Akira Tanaka**  
akira.tanaka@amt-law.com  
*Anderson Mōri & Tomotsune*

## LEGAL FRAMEWORK

### Key legislation

What key legislation and regulations are relevant to foreign individuals moving to or investing in your jurisdiction? What government bodies are charged with enforcing these laws and what is the extent of their powers?

The Immigration Control and Refugee Recognition Act prescribes Japanese immigration rules. The Immigration Services Agency is in charge of enforcement of this Act. Their power is broad, ranging from refusal of entry to deportation. The Foreign Exchange and Foreign Trade Act and some other laws concerning specific businesses (such as the Broadcasting Act) provide for restrictions on foreign individuals investing in Japan. The competent ministries are in charge of enforcement of these laws (eg, the Ministry of Internal Affairs and Communications is charged with enforcing the Broadcasting Act) and their power may include the cancellation of licences and issuance of orders for selling shares in an investment target company.

*Law stated - 27 September 2022*

### Real property

Are there any particular rules or restrictions on foreign individuals purchasing or investing in real property in your jurisdiction?

In principle, there are no such particular rules or restrictions. As an exceptional rule, the Act on Investigation for Important Land, etc, which came into force in 2021 based on the concern that national security may be threatened by foreign individuals acquiring lands, provides for certain restrictions on individuals (including foreign individuals) purchasing or investing in isolated islands near the sea border or pieces of land near important facilities such as a Japan Self-Defence Forces base or a nuclear power plant.

*Law stated - 27 September 2022*

### Establishing a business

Are there any particular rules or restrictions on foreign individuals establishing a business in your jurisdiction?

Some laws concerning specific businesses provide for rules or restrictions on foreign individuals establishing a business in Japan. For example, under the Telecommunications Business Act, foreign corporations and individuals who intend to operate a telecommunication business in Japan must appoint a representative person or an agent in Japan. Under the Companies Act, not only a Japanese corporation established by a foreign individual but also foreign corporations conducting business in Japan are required to register certain information with the competent Legal Affairs Bureau in Japan.

*Law stated - 27 September 2022*

## TAX

### Residence and domicile

## How does an individual become taxable in your jurisdiction?

The main tax imposed on an individual's income is income tax under the Income Tax Act. An individual's taxability is generally determined by the location of their 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 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 Japanese-sourced income and non-Japanese-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 period) are treated as non-permanent resident individuals; and
- non-resident individuals are taxed on Japanese-sourced income only.

Upon the death of an individual, inheritance tax is imposed on the legal heirs and the testamentary donees (ie, 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. The tax liability of legal heirs and testamentary donees of the deceased is generally determined by the location of their residence, their nationality, the location of the deceased's residence and the location of the assets. The 2017, 2018 and 2021 tax reforms amended the rules concerning the tax liability of legal heirs and testamentary donees of the deceased in order to achieve two goals:

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

*Law stated - 27 September 2022*

## Income

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

In addition to income tax (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 tax: the prefectural level and 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 their business income by the prefectural tax authorities where their 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 their office, but it generally ranges from between 3 and 5 per cent.

*Law stated - 27 September 2022*

## Capital gains

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

Capital gains are derived from the sale of assets.

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 gains as a result of the rise in the 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 a 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 (same as above) from the present until 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).

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 and introduced a new exit tax, which imposes income tax on unrealised 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 their 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, their legal heirs and testamentary donees who are non-residents of Japan come to acquire the financial assets.

*Law stated - 27 September 2022*

## Lifetime gifts

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

If an individual makes lifetime gifts, different tax consequences will arise between (1) an individual who makes gifts to another individual and (2) an individual who makes gifts to a legal entity.

In the case of (1), the recipient will be subject to a gift tax. As set out in the table below, 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 aged 20), the recipient can elect to enjoy the reduced gift tax rate and credit such gift tax against the inheritance tax after the death of the donor.



The donor will not generally be subject to tax. However, if the recipient does not pay the gift tax, the donor will be jointly liable.

The present gift tax rate is as in the following chart. However, reduced rates are applicable to gifts from lineal ascendants to lineal descendants who are 18 years of age (20 years of age in the case of gifts made on or before March 31 2022) or older.

Tax base after basic deduction* applicable to all gifts	Tax rate
¥2 million or less	10 per cent
¥3 million or less	15 per cent
¥4 million or less	20 per cent
¥6 million or less	30 per cent
¥10 million or less	40 per cent
¥15 million or less	45 per cent
¥30 million or less	50 per cent
More than ¥30 million	55 per cent
* Basic deduction is ¥1.1 million (ie, no tax is payable for gifts of amounts up to ¥1.1 million).	

In the case of (2), the recipient legal entity will be subject to corporate income tax. The tax base is the fair market value of the gifts. The donor 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. However, if the recipient legal entity falls within the category of certain charities, deemed capital gains tax will not be levied.

*Law stated - 27 September 2022*

## Inheritance

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 gains tax, respectively. The tax obligation of the individual testator will be borne by their heirs.

Inheritance tax is imposed upon each of the legal heirs and testamentary donees and not upon the estate itself. The basic method of calculating inheritance tax where an estate is gifted to individuals and inheritance tax is payable is as follows:

- 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.
- A deduction of ¥30 million and ¥6 million multiplied by the number of legal heirs, including illegitimate and adopted children, will be applied to the tax base. However, there are certain restrictions on the number of adopted children who may be included in this calculation to prevent inheritance tax avoidance.
- Assuming that the tax base determined in the above points is divided among the legal heirs pursuant to the legal inheritance ratio provided in the Civil Code, the total amount of inheritance tax to be imposed is then calculated. Inheritance tax 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 such heir's legal inheritance ratio, then the inheritance tax to be imposed upon such heir will increase or decrease accordingly. Nonetheless, the total amount of inheritance tax to be imposed upon all the legal heirs will, in principle, remain the same as that where the division is faithful to each legal heir's legal inheritance ratio.

- In calculating the amount of inheritance tax, 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 less than 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 taxpayer. On the other hand, a person who receives assets by inheritance or testament and is not a spouse or a first-degree family member (including an heir per stirpes) of the decedent will be liable for an additional 20 per cent of inheritance tax.
- In the event that an heir or testamentary donee does not pay the inheritance tax due, the other heirs and testamentary donees are jointly and severally 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 per cent
¥30 million or less	15 per cent
¥50 million or less	20 per cent
¥100 million or less	30 per cent
¥200 million or less	40 per cent
¥300 million or less	45 per cent
¥600 million or less	50 per cent
More than ¥600 million	55 per cent

Note that preferential tax treatments apply to cases of inheritance involving business succession. Such preferential treatment is intended to facilitate business successions by reducing the inheritance tax burden. This treatment may be applied to the inheritance of small to medium-sized businesses.

*Law stated - 27 September 2022*

## Real property

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

Upon acquisition, a real property acquisition tax is imposed. The tax rate is generally 3 or 4 per cent. Upon registration, a registration and licence tax is 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). If the grounds for the acquisition of real property is inheritance, inheritance tax is 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 real property acquisition tax will not be imposed.

During the period in which real property is held, a fixed assets tax is imposed at a general 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 a 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) is imposed.

*Law stated - 27 September 2022*

### **Non-cash assets**

**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.

Customs and duties are levied depending on the goods to be imported. In addition, upon importation, a consumption tax will be levied at a rate of 10 per cent (or 8 per cent for certain products, such as food and non-alcoholic beverages).

The rates of customs and duties are prescribed in the Customs Tariff Act. Certain economic partnership agreements (EPAs) to which Japan is a signatory provide preferential treatment in terms of tariff rates. Customs and duties are applicable even if the importation is for personal use and enjoyment). However, if goods are imported using general cargo or postal packages 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 for alcohol and cigarettes.

*Law stated - 27 September 2022*

### **Other taxes**

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

Consumption tax may be relevant to an individual. The present rate is 10 per cent. Certain products, such as food and non-alcoholic beverages, may enjoy a reduced tax rate of 8 per cent. A 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. Generally, such an individual simply bears the economic burden of the consumption tax passed onto consumers by businesses.

*Law stated - 27 September 2022*

### **Trusts and other holding vehicles**

**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:

- transparent trusts;

- non-transparent trusts; and
- corporate trusts.

Transparent 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 the trusts classified into the latter two points are included in this category.

Beneficiaries of non-transparent 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 in which the trustee is a corporation and certain specific purpose trusts.

Beneficiaries of non-transparent 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 in which the trustee is a corporation, and certain specific purpose trusts.

*Law stated - 27 September 2022*

## Charities

### How are charities taxed in your jurisdiction?

Various types of charities are recognised as long as the legal requirements are met. Generally, charities are tax-exempt entities, including the donations and charitable contributions they receive. However, if such charities have certain premises established as offices and continuously conduct business in certain areas for profit as stipulated in the Corporate Tax Act, such businesses are taxable to the extent profits are derived from such businesses.

*Law stated - 27 September 2022*

## Anti-avoidance and anti-abuse provisions

### What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

The Inheritance Tax Act has some anti-avoidance and anti-abuse tax provisions. For example, if a transaction or calculation conducted by a closely held company unreasonably reduces the burden of inheritance tax or gift tax on its shareholders, the tax authorities are entitled to deny such a transaction or calculation and levy an appropriate amount of tax.

To restrict aggressive or abusive tax planning, such as making a bequest or donation to a certain corporation substantially controlled by the person who made the bequest or donation or a family member of that person, inheritance tax or gift tax shall be levied on a person who receives special benefits from the corporation.

The same applies to making a bequest or donation to a non-juridical entity substantially controlled by the person who

made the bequest or donation or a family member of that person, where the non-juridical entity shall be deemed to be an individual for inheritance tax and gift tax and that inheritance tax or gift tax shall be levied on the non-juridical entity, with some exceptions.

*Law stated - 27 September 2022*

## TRUSTS AND FOUNDATIONS

### Trusts

#### 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, 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 the trustees' own properties, and they must be kept free from seizure by the trustees' own creditors and bankruptcy. There are three methods by which a trust may be established:

- by a contract between the settlor and the trustee;
- by the will of the settlor; and
- by a declaration whereby the settlor declares, in a notarised deed or another prescribed form, that it will manage or dispose of property in accordance with certain objectives and will carry out the necessary acts to achieve such objectives.

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

*Law stated - 27 September 2022*

### Private foundations

#### 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, 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 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.

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

*Law stated - 27 September 2022*

## Disputes

What issues typically give rise to disputes relating to trusts and foundations? How are these disputes resolved? (What are the most common causes of action? Which courts are used? Is alternative dispute resolution (ADR) available and commonly used? What remedies are commonly awarded?)

Various issues give rise to disputes relating to trusts and foundations. Validity of family trusts established in consideration of dementia suffered by a family member are a typical case. In Japan, there is no special court with jurisdiction over disputes relating to trusts or foundations. If the trustee is a trust bank, ADR is generally available for disputes against the trustee. The type of remedy available depends on the nature of disputes.

*Law stated - 27 September 2022*

## SAME-SEX MARRIAGES AND CIVIL UNIONS

### Same-sex relationships

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

Same-sex marriage is treated as invalid. If a person with gender dysphoria changes their gender pursuant to the Gender Identity Disorder Act, then such person may enter into a marriage with a person who is biologically the same sex as such person was before he or she changed their gender. This act stipulates requirements if a person with gender dysphoria wishes to legally change their gender, but it may generally be hard for such person to satisfy the requirements.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code (ie, a spouse in a marital relationship). Accordingly, a person in a same-sex relationship is not eligible for tax benefits granted to 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.

Note, however, that progressive movements in favour of same-sex marriage have arisen at local government level. In March 2015, Shibuya, a ward in Tokyo, enacted a same-sex partnership ordinance under which Shibuya may issue a partnership certificate to same-sex couples who satisfy certain requirements. This will allow such same-sex couples to be treated by Shibuya and business operators located within the ward as equivalent to a formally married couple in limited situations. Such progressive movements have gradually been expanding to other local governments. However, some people continue to object to same-sex marriage by referring to article 24 of the Constitution of Japan, which refers to 'both sexes' of a marriage. On 18 September 2019, the Mooka branch of the Utsunomiya District Court reached a notable decision whereby the plaintiff, a woman who had been in a relationship with a same-sex partner similar to a de facto marriage between heterosexual couples, could claim for damages caused by the infidelity of her same-sex partner. This decision was upheld by the Tokyo High Court and the Supreme Court.

*Law stated - 27 September 2022*

### Heterosexual civil unions

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

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 a heterosexual couple lives together with the intention to marry but has not submitted a marriage notification, the relationship is not treated as a marital relationship but as a de facto marriage. Nonetheless, such couples are also eligible, to a limited extent, for protections and obligations that are substantially similar to those provided for in 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, considering their property, income and all other circumstances; and
- for social security purposes, a de facto marriage is often treated the same as a marital relationship.

However, there is a notable difference between marriage and de facto marriage: a partner in a de facto marriage is not treated as an heir; however, it is possible to give an estate to the partner by testament.

Under Japanese tax law, the term 'spouse' has the same meaning as in the Civil Code (ie, a spouse in a marital relationship). Accordingly, a partner in a de facto marriage is not eligible for tax benefits granted to a spouse or in 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.

*Law stated - 27 September 2022*

## SUCCESSION

### Estate constitution

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

In principle, 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.

*Law stated - 27 September 2022*

### Disposition

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

In principle, individuals may make 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 maintaining an adulterous relationship) and thus should be considered void. However, if the heirs who are entitled to a statutory reserved share claim for abatement of the gift so requested, the recipient must make monetary compensation equivalent to the statutory reserved share claim.

*Law stated - 27 September 2022*

## 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 requested, the recipient must make monetary compensation equivalent to the statutory reserved share claim.

*Law stated - 27 September 2022*

### **Intestacy**

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 is survived by their spouse, such spouse shall, in principle, always be an heir. Other heirs are determined according to who survives the decedent.

#### **Intestate survived by the spouse and children**

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

#### **Intestate survived by the spouse and lineal ascendants with no surviving children**

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

#### **Intestate survived by the 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 no heirs per stirpes) nor surviving lineal ascendants. If the decedent is survived by their spouse and siblings, the surviving spouse will take three-quarters of the estate, and the surviving siblings will take one-quarter of the estate in equal shares. If any of the decedent's siblings died prior to the death of the decedent or lost the right to inheritance due to disqualification or disinheritance, and if their 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 portions**

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



### **Adopted and illegitimate children**

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 treated in the same way as natural legitimate children.

Law stated - 27 September 2022

### **Distribution**

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 governs the distribution of the individual's estate. The explanations in this section on succession are based on the Civil Code. 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 register their share to perfect the changes in rights through the procedure required by Japanese law.

Law stated - 27 September 2022

### **Formalities**

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 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 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 death; or
- the law of the place where the real property is located in the case of a will concerning real property.

If the Civil Code applies to a will in question, then (1) a holographic document, (2) a notarised document or (3) a sealed and notarised envelope document is considered valid in terms of formality.

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 will become effective at the time of the donor's death. Gift agreements are required to comply with relatively lower standards of formality in order to be valid.

Law stated - 27 September 2022

## Foreign wills

### 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.

*Law stated - 27 September 2022*

## Administration

### Who has the right to administer an estate?

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

If there is a will, an executor, in principle, has the right and duty to administer the estate until 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.

*Law stated - 27 September 2022*

### 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, the estate automatically and directly passes to the heirs upon the commencement of the inheritance and, if there are two or more heirs, they will co-own the decedent's assets. Under this general rule, no heir is, in principle, able to withdraw deposits of the decedent 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. This may cause some inconvenience. To address this issue, the revised Civil Code, which, in principle, took effect on 1 July 2019, introduced temporary payment rules such that the court may issue a temporary order to grant partial withdrawal of deposits in a more flexible and expeditious manner than in the case of the formal preliminary injunction procedures. A new measure has also been introduced such that heirs can withdraw certain small deposit amounts without obtaining consent from all the other heirs.

If a person dies testate, the estate will be passed to their heirs, testamentary donees and recipient legal entities in accordance with the will.

*Law stated - 27 September 2022*

## Challenge

### Is there a procedure for disappointed heirs and/or 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 statutory reserved

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

*Law stated - 27 September 2022*

## CAPACITY AND POWER OF ATTORNEY

### Minors

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

*Law stated - 27 September 2022*

### Age of majority

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 holding and managing property at the age of 18. A minor who is permitted to carry out business has the same capacity to act as a person who has reached the age of 18, as far as such business is concerned.

*Law stated - 27 September 2022*

### Loss of capacity

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

If an individual loses 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 an individual under guardianship may, in principle, be rescinded.

If an individual'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. An individual under curatorship must obtain the consent of the curator if he or she intends to do important acts, such as borrowing money. If there is no consent, acts of such individual may, in principle, be rescinded.

If an individual 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. An individual under assistance must obtain the consent of the assistant if he or she intends to do any particular act determined by the court. If there is no consent, such an act may, in principle, be rescinded.

*Law stated - 27 September 2022*

## IMMIGRATION

### Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

In principle, a visa is required. However, if foreign nationals from certain visa-exempt countries intend to visit Japan for certain purposes for a limited period of time, then a visa is not required (with some exceptions under covid-19-related measures).

*Law stated - 27 September 2022*

### High net worth individuals

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:

- being aged 18 or older with savings equivalent to more than ¥30 million owned by themselves and their spouse;
- travelling as an accompanying spouse of the individual who is mentioned in the above point (they must have the same place of residence and travel together in Japan); and
- the individual and the accompanying spouse having sufficient medical insurance to cover their stay in Japan.

In addition, a new category of visa status, the highly skilled foreign professional visa, was formally introduced in 2015. The highly skilled foreign professional visa has the following three sub-categories depending upon the activities of the individuals:

- advanced academic research activities;
- advanced specialised or technical activities; and
- advanced business management activities.

In determining whether a highly skilled foreign professional visa should be issued, the points-based system is used. For example, in the case of an individual applying for the highly skilled foreign professional visa (advanced specialised or technical activities), if he or she is 30 years old, the amount of such individual's promised annual salary is ¥10 million and he or she has a doctoral degree, then 10 points, 40 points and 30 points is 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 a total of 70 or more points are awarded, a highly skilled foreign professional visa may be issued, in which case various types of preferential treatment will be available.

After engaging in activities as a highly skilled professional for three years or more, such individual may be promoted from highly skilled foreign professional (lower status) to highly skilled foreign professional (higher status), in which case additional preferential treatment will be available.

*Law stated - 27 September 2022*

## UPDATE & TRENDS

### Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

In recent years, the Japanese tax authorities have been very interested in obtaining information on assets held by high net worth individuals, most of which are Japanese citizens. For this purpose, an individual is currently required to submit a 'report on assets and obligations' if they (1) obtain taxable income of more than ¥20 million in the year and (2) hold as of 31 December of such year, assets more than ¥300 million or financial assets (eg, securities) worth more than ¥100 million subject to the exit tax. As can be seen from this, an individual who obtains an income of under ¥20 million has not been required to submit a 'report on assets and obligations' regardless of the amount of his or her assets. The 2022 tax reform amended the rule, under which, in addition to the current rule as noted above, an individual will also be required to submit a 'report on assets and obligations' if such individual holds assets of no less than ¥1 billion, regardless of the amount of taxable income in the relevant year. This new rule will apply to a 'report on assets and obligations' for the year 2023.

*Law stated - 27 September 2022*

## Jurisdictions

	<b>Andorra</b>	Cases & Lacabra
	<b>Armenia</b>	Concern Dialog Law Firm
	<b>Australia</b>	Kalus Kenny Intalex
	<b>Austria</b>	DORDA
	<b>Belgium</b>	Loyens & Loeff
	<b>Canada</b>	Rogerson Law Corporation
	<b>Colombia</b>	Rimôn
	<b>Cyprus</b>	Patrikios Pavlou & Associates LLC
	<b>Germany</b>	POELLATH
	<b>Hong Kong</b>	Charles Russell Speechlys
	<b>Ireland</b>	Matheson
	<b>Italy</b>	Boies Schiller Flexner LLP
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Liechtenstein</b>	Gasser Partner
	<b>Malta</b>	GVZH Advocates
	<b>Monaco</b>	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	<b>Spain</b>	Cases & Lacabra
	<b>Switzerland</b>	Kellerhals Carrard
	<b>United Kingdom - England &amp; Wales</b>	McDermott Will & Emery
	<b>USA</b>	Holland & Knight LLP