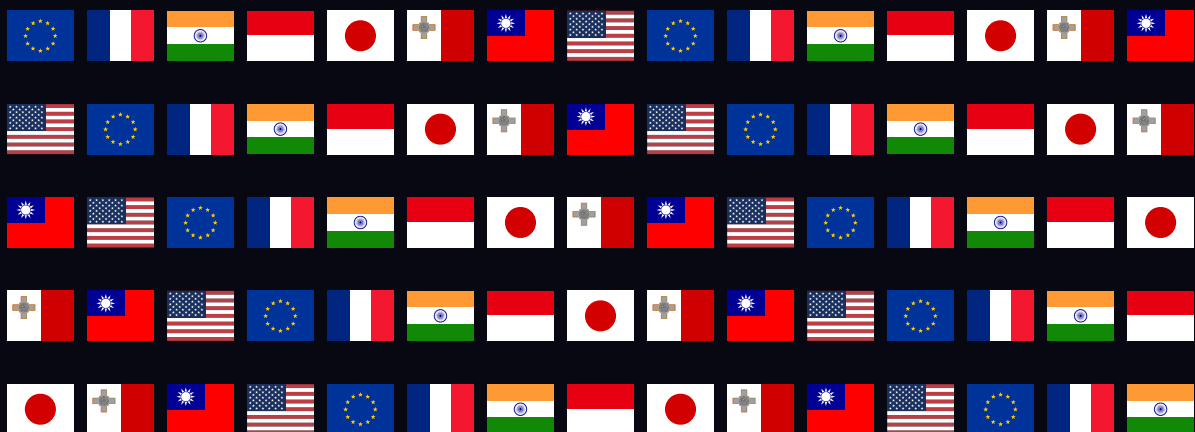


ENVIRONMENT

Japan



Environment

Consulting editors

James M Auslander, Brook J Detterman

Beveridge & Diamond PC

Quick reference guide enabling side-by-side comparison of local insights, including legislation and main environmental regulations; regulation of hazardous activities and substances; environmental aspects in M&A, public procurement and other transactions; environmental impact assessment; regulatory authorities; judicial proceedings; applicable international treaties and institutions; and recent trends.

Generated 20 September 2023

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 - 2023 Law Business Research

Table of contents

LEGISLATION

Main environmental regulations
Integrated pollution prevention and control
Soil pollution
Regulation of waste
Regulation of air emissions
Protection of fresh water and seawater
Protection of natural spaces and landscapes
Protection of flora and fauna species
Noise, odours and vibrations
Liability for damage to the environment
Environmental taxes
Environmental reporting
Government policy

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities
Regulation of hazardous products and substances
Industrial accidents

ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT

Environmental aspects in M&A transactions
Environmental aspects in other transactions
Environmental aspects in public procurement

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment
Environmental assessment process

REGULATORY AUTHORITIES

Regulatory authorities
Investigation
Administrative decisions
Sanctions and remedies

Appeal of regulators' decisions

JUDICIAL PROCEEDINGS

Judicial proceedings

Powers of courts

Civil claims

Defences and indemnities

Directors' or officers' defences

Appeal process

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

International treaties and regulatory policy

UPDATE AND TRENDS

Key developments of the past year

Contributors

Japan



Kenji Miyagawa
kenji.miyagawa@amt-law.com
Anderson Mōri & Tomotsune

ANDERSON MŌRI & TOMOTSUNE



Mai Kurano
mai.kurano@amt-law.com
Anderson Mōri & Tomotsune



Ryotaro Kagawa
ryotaro.kagawa@amt-law.com
Anderson Mōri & Tomotsune

LEGISLATION

Main environmental regulations

What are the main statutes and regulations relating to the environment?

Encouraged by international environmental trends, including the Rio de Janeiro Declaration of 1992, Japan enacted the Basic Act on the Environment in 1993. The Basic Act on the Environment sets out the basic principles of environmental conservation and clarifies the responsibilities of each party involved.

The basic principles of the Basic Act on the Environment are: (1) to ensure that current and future generations can enjoy the blessings of the environment and pass them on to future generations; (2) to build a society that facilitates sustainable development with reduced environmental impact based on the fair allocation of roles among all people; and (3) to actively promote global environmental conservation through international cooperation. The basic guidelines for the formulation and implementation of the environmental conservation policies set forth in the Basic Act on the Environment are to ensure that (1) the atmosphere, water, soil and other natural components of the environment are maintained in good condition so as to protect human health, conserve the living environment and properly preserve the natural environment; (2) the diversity of ecosystems, wildlife species, and other biological diversity are protected, and the various types of natural environments of the forest, farmlands and water bodies, etc. are systematically conserved in accordance with the natural and social conditions of the area; and (3) people can stay in touch with the lush green nature.

The Basic Act on the Environment requires the Japanese government to prepare a basic environmental plan (article 15). The basic environmental plan establishes the basic policy of the Japanese government with respect to (1) the outline of long-term comprehensive policies for environmental conservation; and (2) the particulars required to promote the policies for environmental conservation in a comprehensive and systematic manner, in addition to those provided for in (1). The fifth plan has been formulated in 2018 to reflect the Sustainable Development Goals (SDGs). In 2023, the sixth plan has been being discussed by the Japanese government to reflect recent discussions, including how to achieve each of (1) preservation of various environmental value (eg, carbon neutrality, circular economy, biodiversity) and (2) economic growth by 2030 or 2050.

Law stated - 31 August 2023

Integrated pollution prevention and control

Is there a system of integrated control of pollution?

In Japan, environmental pollution became a social problem in the 1960s, and in 1967, the Basic Act for Environmental Pollution Control was enacted, which was later incorporated into the Basic Act on the Environment. The Basic Act on the Environment defines 'environmental pollution' as 'air pollution, water pollution (in addition to deterioration of water quality, this includes deterioration of water conditions and the quality of bottom sediments), soil contamination, noise, vibration, ground subsidence (excluding subsidence caused by land excavation for mineral exploitation) and offensive odours caused by business activities and human activities in a broad area, among the hindrances to environment conservation, which cause damage to human health or the living environment (including property closely related to human life as well as flora and fauna closely related to human life and their growing environment; the same applies hereinafter)'. The Basic Act on the Environment provides that prefectural governors may prepare environmental pollution control programmes based on the basic environmental plan (article 17). As of December 2020, 21 areas (18 prefectures and 140 municipalities) throughout Japan have formulated and are implementing such programmes.

Law stated - 31 August 2023

Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

To combat soil pollution, the Soil Contamination Countermeasures Act was enacted in 2002. The purpose of this Act is to facilitate the implementation of countermeasures against soil contamination by formulating measures to ascertain the level of soil contamination by designated hazardous substances and measures to prevent harm to human health resulting from such contamination, thereby protecting the health of citizens (article 1).

The specific regulatory approach is as follows: if the prefectural governor or other competent authority finds that there is a risk of soil contamination following the closure of a specified facility using hazardous substances or upon receipt of a notification of changes in the form or nature of land of an area larger than a certain size, an investigation is carried out by a designated investigation institution, and land found not to be compliant with the standards specified in the ordinances of the Ministry of the Environment is designated as an area requiring action. If this is the case, under the direction of the prefectural governor or other competent authority, the owner of the land or the polluting party must prepare a plan for the removal of the contamination, carry out decontamination measures and report on the results.

Law stated - 31 August 2023

Regulation of waste

What types of waste are regulated and how?

Japan enacted the Waste Management and Public Cleansing Act in 1970 to ensure the proper disposal of waste. This Act regulates the proper disposal of waste, the establishment of waste treatment facilities, and waste treatment business operators. In addition, the following laws have been enacted as special laws or special measures laws:

- The Act on Special Measures concerning the Disposal of Disaster Waste.
- The Act on Special Measures concerning the Proper Treatment of Polychlorinated Biphenyl Waste.
- The Act on Promoting the Treatment of Debris that Drift Ashore concerning measures against objects drifting ashore.
- The Act on Special Measures concerning the Handling of Environment Pollution by Radioactive Materials, which applies only to the accident at the Tokyo Electric Power Company (TEPCO)'s Fukushima Daiichi Nuclear Power Plant.

To promote the efficient use of resources, the Act on the Promotion of Effective Utilization of Resources was enacted in 2000. This Act is aimed at certain business operators and regulates the reduction of by-products, the use of recyclable resources or reusable parts, and labelling to promote sorted collection. Other laws that have been enacted to implement regulations according to the nature of individual goods include: the Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging, the Act on the Promotion of Recycling of Small Waste Electrical and Electronic Equipment, the Construction Material Recycling Act, the Act on Promotion of Recycling and Related Activities for Treatment of Cyclical Food Resources, the Act on Recycling of End-of-Life Automobiles, and the Act on the Promotion of Recycling of Small Waste Electrical and Electronic Equipment.

Law stated - 31 August 2023

Regulation of air emissions

What are the main features of the rules governing air emissions?

Japan enacted the Air Pollution Control Act in 1968. This Act sets the emission standards for air pollutants (soot and smoke, volatile organic compounds, particulate matter, and mercury) emitted or dispersed by stationary sources such as factories and workplaces by type of substance and by type and size of facility.

There are also regulations for individual problems caused by mobile sources, such as the Act Concerning Special Measures for Total Emission Reduction of Nitrogen Oxides and Particulate Matter from Automobiles in Specified Areas for automobile emissions, and the Act on the Prevention of Generation of Particulates from Studded Tyres for studded tyre dust.

Law stated - 31 August 2023

Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

Japan enacted the Water Pollution Prevention Act in 1979. This Act aims to prevent water pollution in areas of public water bodies and groundwater, and promotes the regulation of industrial water and the implementation of domestic wastewater measures. For industrial water, the Act sets effluent standards for factories and workplaces and mandates compliance with these standards. For domestic wastewater, the Act provides that municipalities designated as important areas for domestic wastewater measures may formulate programmes to promote domestic wastewater measures and provide guidance and recommendations for wastewater dischargers.

Other enacted laws include the Act on Special Measures concerning Conservation of Lake Water Quality, which regulates enclosed water areas such as lakes and marshes, and the Basic Act on the Water Cycle, which clearly states the basic principle of maintaining or restoring a healthy water cycle and aims to promote the same in a comprehensive and integrated manner.

Law stated - 31 August 2023

Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

In Japan, conservation of the natural environment is regulated by designating certain areas of the existing natural environment and restricting development activities within these areas. Development and other activities within designated areas are regulated by the Natural Conservation Act to ensure biodiversity in areas where the conservation of the natural environment is particularly important, the Natural Parks Act to protect areas of outstanding natural beauty, and other nature conservation laws.

In addition, the Act for the Promotion of Nature Restoration was enacted in 2002, which aims not only to protect existing natural environments but also to restore ecosystems and natural environments that have been damaged in the past. The significance of this Act is that various local entities, including non-profit organisations, are involved in the conservation, restoration, and creation of natural environments such as rivers, wetlands, mudflats, seagrass beds, socio-ecological production landscapes and forests.

The Environmental Impact Assessment Act also seeks to conserve the natural environment by requiring environmental assessments for major projects that may have an impact on the environment.

Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

In Japan, the Basic Act on Biodiversity, enacted in 2008, sets out the basic principles and responsibilities of each party with respect to the conservation and sustainable use of biodiversity.

Specifically, wildlife is protected by regulations that prohibit the collection of plants and animals and restrict the construction of structures in designated areas. Examples of such regulations include the Act on the Protection and Control of Wildlife, the Act on the Conservation of Endangered Species of Wild Fauna and Flora, and the Act on the Prevention of Adverse Ecological Impacts Caused by Designated Invasive Alien Species. Other enacted laws include the Invasive Alien Species Act for the prevention of adverse impacts caused by designated invasive alien species, and the Cartagena Act for the prevention of adverse impacts on biological diversity caused by the use of living modified organisms.

Law stated - 31 August 2023

Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

The Noise Regulation Act, the Offensive Odour Control Act and the Vibration Regulation Act regulate noise, odours and vibrations mainly by designating regulated areas and setting regulatory standards.

The Noise Regulation Act sets regulatory standards for the establishment of factories, workplaces and construction works in designated areas, and requires notifications to be filed with the competent Japanese authorities in respect of the same. In addition, the Act requires the mayor of each municipality in Japan to request the relevant public safety commission to take remedial action if vehicle noise in the designated areas exceeds the threshold as set out in this Act.

The Offensive Odour Control Act sets regulatory standards for the emission of odours by factories and workplaces in designated areas.

The Vibration Regulation Act sets regulatory standards for the establishment of factories and workplaces, and construction works in designated areas, and requires notifications to be filed with the competent Japanese authorities in respect of the same. In addition, the Act requires the mayor of each municipality in Japan to request the relevant road administrator or the relevant public safety commission to take remedial action if road traffic vibration in the designated areas exceeds the threshold as set out in the Act.

Law stated - 31 August 2023

Liability for damage to the environment

Is there a general regime on liability for environmental damage?

The Basic Act on the Environment provides for the polluter-pays principle, according to which the cost of a project undertaken by a national or local government or other corporation for a public works project should be imposed in a fair and appropriate manner on the person that caused the need for the project (article 37). On the basis of this polluter-pays principle, the Act on Entrepreneurs' Bearing of the Cost of Public Pollution Control Works was enacted. This Act provides a system to make polluting business operators bear the costs of public pollution control works by national and local governments.

The Basic Act on the Environment also provides for the beneficiary-pays principle, according to which if a person obtains huge benefits from the implementation of a public works project to conserve the natural environment, the costs shall be imposed on that person in a fair and appropriate manner, up to the maximum amount of the benefit (article 38). The Basic Act on the Environment also contains provisions on public burdens, such as the provision of financial aid under article 22, Paragraph 1.

Legislation enacted to deal with health hazards caused by specific pollutants include the Act on Compensation for Pollution-related Health Damage, the Act on Special Measures Concerning Relief for Victims of Minamata Disease and Solution to the Problem of Minamata Disease, and the Act on Asbestos Health Damage Relief.

Law stated - 31 August 2023

Environmental taxes

Is there any type of environmental tax?

In Japan, a global warming tax is levied on the use of fossil fuels such as petroleum, natural gas, and coal in proportion to their CO₂ emissions. The tax revenue is used for measures to reduce energy-derived CO₂ emissions, including energy-saving measures, the promotion of the use of renewable energy, and the use of cleaner and more efficient fossil fuels. Specific examples of these measures include: promoting the establishment of facilities for innovative low-carbon technology-intensive industries (eg, the lithium-ion battery business) in Japan, promoting the introduction of energy-saving equipment by small and medium-sized enterprises, and promoting the introduction of renewable energy in line with characteristics of each region via the Green New Deal funds and other resources.

In addition, a carbon levy is expected to be introduced by 2028 with the Act on the Promotion of a Smooth Transition to a Decarbonised Growth-Oriented Economic Structure (GX Promotion Act), which has been enacted in May 2023. For your information, GX is an abbreviation of 'green transformation', which means a transformation of economic system to a decarbonised / circular economy.

Law stated - 31 August 2023

Environmental reporting

Are there any notable environmental reporting requirements (eg, regarding emissions, energy consumption or related environmental, social and governance (ESG) reporting obligations)?

In Japan, the greenhouse gas (GHG) emission calculation, reporting and disclosure system has been implemented under the Act on the Promotion of Global Warming Countermeasures, wherein specified emitters that produce significant amounts of GHGs are required to calculate and report their GHG emissions, and the national government compiles and publishes the reported information. This Act provides for a non-penal fine (karyo) for failure to report or false reporting.

In addition, under the Act on Rationalising Energy Use and Shifting to Non-fossil Energy (Energy Saving Act), specified business operators that use a certain amount of energy are obliged to submit periodic reports on their energy use.

Law stated - 31 August 2023

Government policy

How would you describe the general government policy for environmental issues? How are environmental policy objectives influencing the legislative agenda?

The Japanese government is implementing various measures to achieve its 2050 Carbon Neutrality declaration and 2030 GHG emission reduction goal. The year 2021 saw the enactment of the amended Act on the Promotion of Global Warming Countermeasures, which clearly states 2050 Carbon Neutrality as a basic principle.

The amended Act on the Promotion of Global Warming Countermeasures also provides for the promotion of local renewable energy, which has been emphasised in light of the Great East Japan Earthquake and other weather-related disasters caused by global warming.

Furthermore, with the enactment of the GX Promotion Act in May 2023, the government expects to issue bonds for the transition to a decarbonised growth-oriented economic structure (GX Economic Transition Bonds) and introduce a carbon levy and an emissions trading scheme.

Law stated - 31 August 2023

HAZARDOUS ACTIVITIES AND SUBSTANCES

Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Environmental pollution is a typical example of the adverse effects of harmful activities. The Basic Act on the Environment clearly defines 'environmental pollution' as 'air pollution, water pollution, ... caused by business activities and other human activities in a broad area ... which causes damage to human health or the living environment'. Air pollution and water pollution caused by radioactive materials are regulated under the Atomic Energy Basic Act.

The Basic Act on the Environment empowers prefectural governors to plan environmental pollution control programmes. When implementing pollution control projects based on these programmes, prefectural governors are entitled to special financial measures with the prior consent of the Minister of the Environment.

For industrial waste that requires appropriate treatment, the Waste Management and Public Cleansing Act provides for the polluter-pays principle. According to this principle, waste-producing business operators are responsible for the disposal of industrial waste resulting from their business activities. In addition, certain rules must be followed when a discharging party outsources the treatment of waste to a treatment contractor (eg, a discharging operator must conclude a treatment service contract with the treatment contractor before outsourcing the treatment of industrial waste and must submit a waste management sheet (ie, a manifesto) upon delivery of the waste). A person engaged in industrial waste treatment as a business must obtain a licence from the relevant prefectural governor.

Law stated - 31 August 2023

Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

Chemical substances are controlled under different laws depending on their use and toxicity type. Among the various laws, the Act on the Regulation of Manufacture and Evaluation of Chemical Substances (Chemical Substance Evaluation Act) regulates the control of chemical substances that cause long-term chronic toxicity, which is the most important in terms of environmental impact. The purpose of this Act is to prevent environmental pollution caused by chemical substances that pose a risk of harming human health or interfering with the inhabitation and growth of flora and fauna. This Act provides for the prior examination of newly manufactured or imported chemical substances, the requirement to file an ex post facto notification with the competent authority to ascertain the amount of manufactured or imported chemical substances, and the regulation of chemical substances in accordance with their respective properties.

Industrial accidents**What are the regulatory requirements regarding the prevention of industrial accidents?**

In recent years, the existing Japanese laws and regulations governing the working environment in workplaces where chemical substances are handled (eg, the Ordinance on Industrial Safety and Health) have been significantly amended. Regardless of the type of industry or the size of the workplace, those who produce or handle certain specified chemical substances are now required to carry out risk assessments (ie, to identify the hazards and harmfulness of chemical substances and their products, to estimate the degree of danger or health hazard to workers caused by them, and to consider risk reduction measures) and take countermeasures. Business operators are required to take risk reduction measures, if any, as specified in special ordinances (eg, the Ordinance on Industrial Safety and Health and the Ordinance on the Prevention of Hazards due to Specified Chemical Substances, both under the Industrial Safety and Health Act). Other risk reduction methods include substitution with substances of lesser hazard or toxicity, changing operating conditions such as chemical reaction processes, changing the form of chemical substances handled, or a combination of these methods.

Law stated - 31 August 2023

ENVIRONMENTAL ASPECTS IN TRANSACTIONS AND PUBLIC PROCUREMENT**Environmental aspects in M&A transactions****What are the main environmental aspects to consider in M&A transactions?**

The importance of corporate social responsibility (CSR) has increased in recent years and the opportunities to investigate CSR in the course of legal due diligence (DD) for M&A transactions are expected to increase. Under the Act on the Promotion of Business Activities with Environmental Consideration by Specified Corporations, etc, by Facilitating Access to Environmental Information, and Other Measures (Environmental Consideration Promotion Act), business operators must not only provide information on the reduction of environmental impacts in their business activities but also consider information on the reduction of environmental impacts by other business operators when making investments or other transactions with these other business operators. The information to be considered includes whether these other business operators have caused environmental problems. The Environmental Consideration Promotion Act requires large companies to endeavour to publish environmental reports or otherwise disclose the status of environmental considerations in their business activities, and in recent years an increasing number of companies have published such 'CSR reports'.

Recently, there has been a growing interest in environmental DD. Environmental DD is particularly important for manufacturing companies with factories. Examples of required DD items include surveying and assessing soil contamination, air pollution, and wastewater treatment on the land under the factories and the surrounding land, and investigating the status of environmental permits and licences, including those for the transportation and disposal of industrial waste. In May 2023, the Ministry of the Environment published a handbook on environmental DD entitled 'Introductory Guide on Environmental Due Diligence along the Value Chains: Environmental Due Diligence Practices Utilising Environmental Management System (EMS)' (please refer to the website of the Ministry of Environment, which is available in Japanese only).

Law stated - 31 August 2023

Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

The key environmental issues will vary depending on the type of business or activity. For example, in a real estate transaction, property valuation reports or engineering reports will include the results of investigations into soil contamination or other environmental issues. It is therefore important to look out for a possible statement in the due diligence report to the effect that 'a review of the real estate appraisal/engineering report is required'. In addition, a prospective purchaser must check the published information regarding land that meets certain conditions to be recognised as contaminated land under the Soil Contamination Countermeasures Act and local ordinances.

The problem of asbestos has also emerged recently. Under the Industrial Safety and Health Act and the Ordinance on the Prevention of Health Impairment due to Asbestos, business operators are required to take measures to remove and contain asbestos used in the buildings where their workers are employed if they are likely to be exposed to dust dispersed from the buildings.

Law stated - 31 August 2023

Environmental aspects in public procurement

Is environmental protection taken into consideration by public procurement regulations?

When awarding contracts, national and local governments, incorporated administrative agencies, national university corporations, and other public institutions are required to make a comprehensive evaluation that includes the environmental performance of the product or service to be purchased, in addition to the price, as provided in the Act on Promotion of Contracts of the State and Other Entities, Which Show Consideration for Reduction of Emissions of Greenhouse Gases, etc. Under this Act, the state and incorporated administrative agencies must establish a basic policy for promoting contracts that takes into consideration the reduction of GHGs and other emissions at their facilities.

The Act on Promotion of Procurement of Eco-Friendly Goods and Services by the State and Other Entities (Green Purchasing Act), enacted in 2000, provides that the state and other public organisations should take the initiative to promote the procurement of environmentally friendly goods (ie, products and services that contribute to mitigation of negative environmental impact) with the aim of promoting the development of a society capable of sustainable development.

In addition, article 19 of the Basic Act on the Environment provides that 'the State shall take environmental conservation into consideration when formulating and implementing policies which have impacts on the environment'. This article is interpreted as having a 'cross-cutting clause effect', meaning that when the government makes administrative decisions or undertakes public works that affect the environment, it must give due consideration to the environment and conduct an environmental impact assessment in accordance with the magnitude of the impact. While the legal binding force of this provision is debatable, a ministerial disposition made without taking into account a material adverse effect on the environment simply because the specific underlying law does not contain a provision on the obligation to take the environment into account may be considered unlawful under this provision of article 19.

Law stated - 31 August 2023

ENVIRONMENTAL ASSESSMENT

Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

The Environmental Impact Assessment Act of Japan, enacted in 1997, requires environmental impact assessments to be undertaken for large-scale projects that could have a serious impact on the environment.

Thirteen types of projects are subject to this Act: road projects, river projects, railway projects, airport projects, power (including renewable energy power) plant projects, industrial-waste final disposal site projects, land reclamation or drainage projects, land adjustment projects, new housing and urban development projects, industrial park development projects, new city foundation development projects, distribution business centre construction projects, and residential land development projects. These 13 types of projects are divided into Class-1 and Class-2 projects in descending order of scale. While all Class-1 projects must undergo an environmental impact assessment, the need for an environmental impact assessment for a Class-2 project is determined on a case-by-case basis.

In addition to the above 13 project types, port plans are also subject to port environmental assessments.

The above is a description of the projects covered by the Environmental Impact Assessment Act, but many local governments have established their own environmental impact assessment ordinances and may require environmental impact assessments even for projects smaller than the threshold provided under the Act.

Law stated - 31 August 2023

Environmental assessment process

What are the main steps of the environmental assessment process?

In the environmental assessment process, a business operator investigates, predicts and assesses the impact of the project on the surrounding environment and the local living environment, taking into account the views of the general public, local residents, and local authorities.

First, at the planning stage of a project, the business operator prepares a document on primary environment impact consideration. Citizens, mayors, prefectural governors, or ministers can comment on this document. Based on these opinions, the business operator formulates a project plan, finalises the items of the environmental assessment and the proposed methodology, and prepares a scoping document on environment impact consideration. To determine the methodology of the environmental assessment, which must be carried out in accordance with the environment of each region, there is a procedure for hearing the opinions of local residents, other citizens, and local governments, called 'scoping'. The business operator then presents the results of the environmental assessment (survey, forecast, and evaluation) carried out in accordance with the methodology established by these procedures, and prepares a document summarising its view on the conservation of the environment. This document, known as the draft environmental impact statement (Draft EIS), describes the measures for environmental conservation (ie, mitigation measures). The business operator gives public notice of the Draft EIS, considers comments received (if any), revises the contents of the Draft EIS, and prepares an environmental impact statement (EIS). The EIS is submitted to the Minister of the Environment for review. The business operator must also submit the EIS to the licensing authority because the results of the assessment will be taken into account when deciding whether or not to grant a licence, approval, permit, etc.

In addition, even after the EIS process has been completed and the project has commenced, the business operator must submit a report on any environmental conservation surveys that have been conducted.

Law stated - 31 August 2023

REGULATORY AUTHORITIES

Regulatory authorities

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

There is no single agency responsible for the environment in Japan. All ministries and agencies are responsible for the environment, and their respective environmental efforts can be found on the Ministry of the Environment's website, which is available in Japanese only. The Ministry of the Environment is the lead agency responsible for environmental policy and the release of information.

The Basic Act on the Environment clarifies the state's responsibility by providing that the state is responsible for formulating and implementing basic and comprehensive environmental conservation measures in accordance with the basic principles of environmental conservation. While the Basic Act requires the government to formulate a basic plan for environmental conservation (basic environmental plan), it is the Minister of the Environment who is responsible for proposing a draft basic environmental plan (article 15, Paragraph 3 of the Basic Act on the Environment). The Minister of the Environment is also required to publish the basic environmental plan approved by the Cabinet.

The Basic Act on the Environment also clarifies the responsibilities of local governments, business operators, and citizens. Each local government is responsible for formulating and implementing environmental conservation measures in accordance with the state's policies and other measures appropriate to the natural and social conditions of the areas under its jurisdiction. Business operators have the responsibility to dispose of soot, sewage, waste, etc, and to take other measures necessary to prevent environmental pollution or to properly preserve the natural environment, while citizens must strive to reduce the burden on the environment in their daily lives.

There are no laws or regulations that generally and comprehensively define the scope of authority of each regulatory body. Such scope is defined by individual laws.

Law stated - 31 August 2023

Investigation

What are the typical steps in an investigation?

Investigations can be broadly divided into (1) collecting reports from and conducting on-site inspections of business operators to determine their compliance status, and (2) requiring governments to take measurements to confirm the status of the quality of the environmental.

Some laws authorise certain persons (eg, regulatory authorities) to request reports from business operators to verify that they are properly complying with the regulations under each individual law. In practice, reports are often requested as administrative guidance, but in some cases an order for reports may be issued. False reports may be subject to administrative penalties. As encouraging whistleblowers to report is also an important means of investigation, the Whistleblower Protection Act is in place to protect whistleblowers.

On-site inspections by the government are permitted under many environmental laws, including the Soil Contamination Countermeasures Act, the Water Pollution Prevention Act, and the Waste Management and Public Cleansing Act. Most on-site inspections are conducted as administrative monitoring, and the law prohibits such inspections as a means of investigating crimes, whether general or administrative (usually a court warrant is required to enter the site for criminal investigations). However, an administrative officer may report to the police any violation found as a result of the on-site inspection. Upon receipt of the report, the police may conduct a compulsory investigation, if necessary, with a court warrant.

The Air Pollution Control Act and the Water Pollution Prevention Act require prefectural and certain municipal governments to measure and monitor the status of air and water pollution.

Law stated - 31 August 2023

Administrative decisions

What is the procedure for making administrative decisions?

There are two main types of administrative action: non-legally binding administrative guidance and legally binding adverse dispositions. While some individual laws require administrative guidance to be issued prior to any adverse disposition, in practice, administrative guidance is often issued even in cases where individual laws do not require administrative guidance prior to an adverse disposition.

An order by a regulatory authority to improve a state of violation (order for improvement) or to take necessary measures (order to take action) is, in principle, an adverse disposition under the Administrative Procedure Act. Therefore, before imposing the disposition, the regulatory authority must provide the person subject to the disposition with an opportunity to be heard and to rebut the order. Specifically, a hearing (a procedure presided over by an official selected from among the officials of the government agency that imposes the adverse disposition, at which the person subject to the adverse disposition may orally express his or her opinion, submit documentary evidence, and ask the government officials questions) must be held for relatively serious dispositions (such as the revocation of a permit), and an opportunity for explanation (a procedure in which the person subject to the adverse disposition submits a written explanation or documentary evidence to the government agency) must be provided for other adverse dispositions.

Law stated - 31 August 2023

Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Japan does not have a law that generally provides for the sanctions and remedies that the regulator may impose, and penalties are provided for in individual laws.

The various sanctions that exist can be broadly divided into (1) the direct penalty system, which directly punishes violators of obligations, and (2) the pre-sanction order system, which punishes violators who continue to violate even after receiving an improvement order or other adverse disposition. Another sanction similar to the pre-sanction order system is the pre-sanction administrative guidance system, which punishes those who continue to violate even after receiving recommendations and administrative guidance.

Penalties usually include imprisonment with work and fines as statutory penalties. An order to suspend the use of facilities necessary for the business is another type of sanction. For example, the Waste Management and Public Cleansing Act provides that if the structure or maintenance of a general waste treatment facility does not meet the technical standards stipulated by law, the prefectural governor may order the installer or manager of the facility to suspend the use of the waste treatment facility. In addition, if a licence or approval from the relevant authorities is required to conduct a business, such licence or approval may be revoked as a sanction against the offender.

If the party subject to an adverse disposition (such as an order to take action) issued by the regulatory authority fails to comply with the order, the regulatory authority may enforce compliance by way of administrative substitute execution (ie, where the regulatory authority steps in to correct the violation itself). However, the government can only take action under this system of administrative substitution if the obligor fails to comply with its obligation to take action. If the obligor does not comply with his or her obligations (eg, the obligation to suspend drainage), the government will resort

to civil execution.

Law stated - 31 August 2023

Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

Pursuant to the Administrative Complaint Review Act, a person who is dissatisfied with a decision of a regulatory authority may apply for a review. In principle, the competent authority to which a request for review should be submitted is the highest authority (eg, minister, governor, mayor, etc) of the relevant administrative agency that rendered the original administrative disposition (disposition agency) although the decision of such highest authority can be subject to review in a judicial procedure. If there is no such highest authority of the disposition agency, it should be filed with the disposition agency. A person who is dissatisfied with the determination concerning a request for review may request a re-examination, if the relevant individual law contains a provision to that effect. As a simpler method, the person may apply to the disposition agency itself for re-examination and review of the disposition.

As a judicial procedure, an administrative lawsuit may be filed in accordance with the Administrative Case Litigation Act. Among the various types of administrative litigation, the most important are actions to revoke an administrative disposition, actions to declare an administrative disposition null and void, and mandamus actions. The party against whom these actions may be brought is the state or the public body to which the administrative agency that has made the original administrative disposition belongs.

Some individual laws provide that an action for revocation of administrative disposition can be brought only after a decision has been made on a complaint filed.

Law stated - 31 August 2023

JUDICIAL PROCEEDINGS

Judicial proceedings

Are environmental law proceedings in court civil, criminal or both?

Environmental cases can be brought before both civil and criminal courts. There is no special court in Japan that deals exclusively with environmental law cases.

A violation of a criminal provision of an individual law is tried as a criminal case. If a resident seeks an injunction against a business operator's project or development activities, or seeks compensation for damage caused by the business operator's economic activities, the case is heard as a civil case.

There is no special court for administrative actions. They are a type of civil action and are, therefore, heard by an ordinary court.

Law stated - 31 August 2023

Powers of courts

What are the powers of courts in relation to infringements of environmental law?

The violation of a criminal provision of an individual law is tried as a criminal case.

When a business operator engages in business or development activities without obtaining a licence or approval from the government, or when its business or development activities do not meet the legal standards, these incidents are

generally handled within the administrative procedures.

If anyone is harmed by the business or development activities of a business operator, the victim may file a lawsuit against the operator for damages in accordance with the provisions of the Civil Code, and the court has the authority to make a judgement. In addition, an injunction lawsuit may be filed as a means of preventing the business operator from conducting or continuing its business and development activities, and the court has the authority to determine the appropriateness of the injunction. Furthermore, if environmental damage is caused by the exercise or non-exercise of the authority of the national or a local government, a claim for state compensation may be filed, and the court has the authority to make a decision on these suits for state compensation.

Law stated - 31 August 2023

Civil claims

Are civil claims allowed regarding infringements of environmental law?

Civil claims for breach of environment law are possible. They can be broadly divided into claims for damages, claims for injunctive relief and petitions for preliminary injunction.

Claims for damages are usually brought under tort liability in accordance with article 709 of the Civil Code. The plaintiff can claim both property damage (*damnum emergens* (actual/direct damages, such as medical treatment costs) and *lucrum cessans* (indirect damages, such as lost profits)) and moral damage (*solatium*), and in principle, must prove each damage separately. The Act on Compensation for Nuclear Damage (Nuclear Damage Compensation Act) provides for strict liability without fault for damage caused by radiation or toxicity of nuclear fuel materials and the like, as typified by nuclear accidents. However, plaintiffs in many compensation lawsuits against TEPCO for the Fukushima nuclear accident following the Great East Japan Earthquake have pursued TEPCO's liability under article 709 of the Civil Code in addition to its liability under the Nuclear Damage Compensation Act. This is believed to be an attempt to clarify TEPCO's breach of its duty of care by also pursuing its tort liability under article 709 of the Civil Code, which requires proof of negligence. In addition, approximately five months after the Great East Japan Earthquake, a law was enacted to provide early relief to victims, which established a system of provisional payments from the national government to victims. Under this system, the national government makes provisional payments to victims based on the guidelines of the government's Dispute Reconciliation Committee for Nuclear Damage Compensation, and acquires the right to claim compensation from TEPCO by subrogation. Furthermore, the Nuclear Damage Compensation Facilitation Corporation was established following the Fukushima nuclear accident. The compensating party is now entitled to receive financial assistance from the Corporation for the compensation to be paid if the amount payable as compensation for a nuclear accident exceeds a certain amount.

Unlike claims for damages, injunctive actions do not have a clear legal basis. It has therefore become common practice to base injunctions on personal rights (such as the right to life and the right to body). For an injunction to be granted, the wrongful act must be found to be unlawful beyond the point of tolerance.

If the conduct of an ordinary civil action is likely to result in increased damage and it would be impossible to obtain legal redress, a petition for a provisional disposition order may be filed under the Civil Preservation Act as a means of provisional relief pending a decision on the injunction. While injunctive actions and petitions for provisional disposition orders were filed before the Fukushima nuclear accident, injunctions were generally not granted in most court cases before the accident. After the Fukushima nuclear accident, residents won some court cases in the first instance. However, it is not uncommon for the first-instance judgement to be overturned on appeal or the proceedings for objection to the provisional disposition.

Law stated - 31 August 2023

Defences and indemnities

What defences or indemnities are available?

To obtain a judgement upholding a claim in an action for damages, the plaintiff (victim) must prove (1) specific intent or negligence on the part of the party at fault, (2) infringement of a right and unlawfulness, (3) the occurrence of damage and (4) the causal link between the infringement of a right by the party at fault and the damage, and the defendant (the party at fault) may defend against each of these requirements.

With regard to (1), the existence of negligence is usually disputed. Meanwhile, as special laws for the tort liability provided under article 709 of the Civil Code, the Water Pollution Prevention Act and the Air Pollution Control Act provide for strict liability without fault. To claim damages based on a tort under article 709 of the Civil Code, the victim seeking compensation must prove the foreseeability and avoidability of the consequences with regard to the negligence of the party at fault. However, under the strict liability rule, victims can obtain compensation for damages without having to prove the negligence of the party at fault if they can prove the causal link between the infringement and their health or other damage.

If the victim is also at fault, the principles of comparative negligence may apply. The violation of a right or illegality in (2) above will not be found unless the illegality exceeds a tolerable limit, and the defendant (the party at fault) can defend itself on the grounds that the tolerable limit has not been exceeded. There is also a statute of limitations for the right to claim damages based on a tort. If the victims do not exercise their rights within a certain period of time, their claims are time-barred.

Business operators can also take out environmental pollution liability insurance. This is a system under which the insured can receive insurance money if a third party suffers bodily injury or property damage as a result of environmental pollution caused by the insured's facility and a claim is made against the insured, or if the insured is required by government order or otherwise to bear the costs of cleaning up the pollution.

Law stated - 31 August 2023

Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Under the Companies Act, directors are liable for damage caused to the company by negligence in the performance of their duties (liability to the company) and for damage caused to third parties by wilful misconduct or gross negligence in the performance of their duties (liability to third parties). Since what is required of directors is to perform their duties with due care and diligence (article 330 of the Companies Act; article 644 of the Civil Code), directors and officers may defend themselves on the ground that they have fulfilled their duty of due care.

In determining whether directors have discharged their duty of care, if there was no carelessness in their perception of the facts and in their decision-making process under the circumstances at the time of the decision, it can be said that their business judgement was within the directors' discretion and they will be deemed not to have breached their duty of care (the 'business judgement rule'). As such, directors may be able to defend themselves on the basis of the lack of carelessness. A director also has a duty to monitor and supervise the other directors and to establish the systems necessary to ensure the proper conduct of the company's business (ie, internal control system). In these respects, directors can also defend themselves on the basis that they have fulfilled their duty of care. In a lawsuit concerning the liability of some former TEPCO directors to shareholders in relation to the Fukushima nuclear accident, the reasonableness of the former directors' business judgement was disputed. The court of first instance ruled that the former directors' judgement was extremely unreasonable, stating that they left the situation as it was without taking

any tsunami countermeasures, even though there was no continuing expectation that a possible tsunami would not reach the Fukushima nuclear plant site, and thus failed to take and postponed taking any safety measures against tsunamis.

Law stated - 31 August 2023

Appeal process

What is the appeal process from trials?

The Code of Civil Procedure provides that an appeal may be lodged in civil cases within 14 days from the day following the date of service of the judgement. An appeal may be lodged with the competent high court against the judgement of the district court of first instance, and with the Supreme Court against the judgement of the high court of second instance.

In the case of a criminal trial for violation of any criminal provision of an individual law, an appeal may be lodged within 14 days from the day following the pronouncement of the judgement of the court of first instance. An appeal may be lodged only on the grounds set out in the Code of Criminal Procedure (eg, unlawful proceedings). A party dissatisfied with the decision of the court of appeal may appeal to the Supreme Court, but the grounds for this final appeal are also limited.

Law stated - 31 August 2023

INTERNATIONAL TREATIES AND INSTITUTIONS

International treaties

Is your country a contracting state to any international environmental treaties, or similar agreements?

Japan is a signatory to treaties and conventions relating to environmental issues such as protection of the marine environment, transboundary movements of chemical substances and hazardous wastes, the protection of the ozone layer, biological diversity, wild fauna and flora, forests and desertification, and climate change. Major environmental conventions to which Japan is a party include the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Montreal Protocol, the Basel Convention, the Washington Convention and the Ramsar Convention.

Law stated - 31 August 2023

International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

Under the Japanese Constitution, treaties have domestic legal force once they are promulgated. However, there are several ways to ensure that the rights and obligations under the treaties are implemented domestically, including responding with the existing Japanese laws, amending or repealing existing laws that are inconsistent with the treaties, and enacting new laws.

For example, to implement the Basel Convention domestically, the Waste Management and Public Cleansing Act, an existing law, was partially amended and the Act on the Control of Export, Import and Others of Specified Hazardous Wastes and Other Wastes (Basel Act) was newly enacted.

UPDATE AND TRENDS**Key developments of the past year**








Are there any emerging trends or hot topics in environment law in your jurisdiction?

In April 2022, in view of the growing importance of further promoting the recycling of plastic resources in Japan in recent years, the Act on the Promotion of Resource Circulation for Plastics was enacted. Based on this Act, a set of decision criteria has been developed for business operators that produce plastic products and those that generate plastic product waste to work towards achieving this goal.

In May 2023, the Ministry of the Environment published an environmental due diligence handbook entitled the 'Introductory Guide on Environmental Due Diligence along the Value Chains: Environmental Due Diligence Practices Utilizing Environmental Management System (EMS)'. Following the publication in 2020 of the 'Introductory Guide on Environmental Due Diligence along the Value Chains: Referencing the OECD Guidance' (available in Japanese only) with the aim of promoting environmental DD efforts by business operators in Japan while introducing the process described in the 'OECD Due Diligence Guidance for Responsible Business Conduct' (OECD Guidance), the Ministry of the Environment conducted ongoing interviews with companies and determined that it would be useful to organise information on how to develop an environmental management system and implement the DD process required by the OECD Guidance, leading to the publication of the above-mentioned handbook. The handbook clearly states that environmental DD should be carried out to identify, prevent and mitigate not only the negative environmental impacts caused by each company's activities, but also those that may occur throughout the value chain.

Law stated - 31 August 2023

Jurisdictions

| | | |
|---|-----------------------|----------------------------------|
|  | European Union | Allen & Overy LLP |
|  | France | Huglo Lepage Avocats |
|  | India | Shardul Amarchand Mangaldas & Co |
|  | Indonesia | SSEK Law Firm |
|  | Japan | Anderson Mōri & Tomotsune |
|  | Malta | Camilleri Preziosi |
|  | Taiwan | Lee and Li Attorneys at Law |
|  | USA | Beveridge & Diamond PC |