

Country Guide

Japan

Prepared by



LexMundi
Bringing the
best togetherTM

lexmundi.com

Table of Contents

I.	The Country At A Glance	3
II.	General Considerations.....	4
III.	Investment Incentives.....	12
IV.	Financial Facilities	12
V.	Exchange Controls	13
VI.	Import/Export Regulations	13
VII.	Structures for Doing Business.....	14
VIII.	Requirements for the Establishment of a Business.....	15
IX.	Operation of the Business	18
X.	Cessation or Termination of Business.....	20
XI.	Labor Legislation, Relation, and Supply	21
XII.	Tax on Corporations	22
XIII.	Tax on Individuals	24
XIV.	Other Taxes	26
XV.	Immigration Requirements.....	26
XVI.	Dispute Resolution	26

Guide To Doing Business Questionnaire:

Japan - Nishimura & Asahi (Gaikokuho Kyodo Jigyo)

I. The Country At A Glance

A. What languages are spoken?

The primary language is Japanese. The writing system is made up of kanji, or Chinese characters (there are some 3,000 in daily use), and two syllabaries—hiragana and katakana, each composed of 46 kana, which are phonetic symbols.

B. What is the exchange rate for the U.S. dollar and the Euro?

145.53 Japanese Yen (JPY) per US dollar (August 31, 2023)
157.77 JPY per Euro (August 31, 2023)

C. Describe your country's geography, proximity to other countries and climate

Japan is a 3,200 kilometer-long archipelago stretching in a north-to-southward direction in the NW Pacific and separated from the Asian landmass by the Sea of Japan. If situated at the same latitude as Europe, it would extend from central France to Algeria, with Tokyo being located at the Strait of Gibraltar. Its total area of 377,815 km² is slightly larger than Italy and about 80% of it is mountainous. The fabled Mt. Fuji within, located a mere two hours from Tokyo is the highest peak in Japan at 3,776 meters. In the capital, Tokyo, the average daily maximum and minimum temperatures are 9.8°C and 5.4°C in January and 31.3°C and 23.5°C in August. The period from around early June to the middle of July is known as the rainy season due to almost daily rain showers that inundate the islands.

Japan's population of 124.86 million (2022) ranks eleventh in the world. In terms of population density, Japan ranks eleventh among countries with a population of 10 million or more. The life expectancy of Japanese people is one of the highest in the world at 81.05 years for men and 87.09 years for women (2022), and this is increasing the share of the over-65 age group which was 28.9% in 2022 and which is due to reach nearly 38% by 2065.

D. Are there cultural influences or prohibitions on the way business is conducted?

Technological sophistication and mass culture have not led to strongly rooted individualism in Japan. Groups are still a very strong source of identity. Consensus building and the respect given to hierarchical relationships lead to subtleties of social protocol easily lost on outsiders. The conflict between group and individual is more often than not left unvoiced. The refinement of taste or skill, often through aesthetic pursuits, is not in general individualistic; it focuses on appreciation or individual development rather than making a "cultural statement". Because of these contrasts with Western cultures, Japan is often cited in current literature as blending, with various degrees of success, modern culture with its ancient cultural roots.

The Japanese traditionally prefer to include vague contract provisions such as "(certain things) shall be determined by mutual negotiation" rather than explicit provisions that clearly state the rights of each party on every presumable occasion. Such attitudes reflect a preference for the flexible implementation of a contract according to future contingencies upon the mutual understanding that the parties believe is implied in the contract. However, more and more Japanese, particularly major corporations, are becoming legalistic in their approach towards contracts.

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries. Through close collaboration, our member firms are able to offer their clients preferred access to more than 21,000 lawyers worldwide - a global resource of unmatched breadth and depth.

Lex Mundi - the law firms that know your markets.

www.lexmundi.com

There are a number of areas of regulations which, reflecting Japanese traditions, social requirements or business practices, would have an unexpected impact on foreign parties doing business in Japan. An example may be found in the area of labor laws, wherein the discharge of an employee is quite restricted. The consumer protection laws and environmental laws are also sensitive areas for industries.

E. Are there religious influences or prohibitions on the way business is conducted?

In general, the Japanese are considered to have an open-minded attitude to religion, and no particular religious influences or prohibitions are recognized in business fields.

F. Explain your country's infrastructure. Be sure to explain which cities have airports, railroad systems, ports, and public transportation.

Japan has a well-maintained infrastructure. The number of airports with international and domestic flights in service is about 90 including Haneda and Narita (Tokyo area), Chubu International (Nagoya area), Kansai (Osaka area), Shin Chitose (Sapporo area), and Fukuoka (Kyushu area). Domestic railways are well-developed including the "Shinkansen" (super express), which connects major Japanese cities such as Tokyo, Osaka, Nagoya, and Fukuoka. There are many ports all over Japan, including those located near international airports.

G. Explain the communication system

The telecommunications market in Japan consists of private companies under a regulated market requiring a business license, a registration or a filing depending on the services to be provided. Recently, the mobile communications service has been a growing market where there are mainly two types of the players, MNO (Mobile Network Operators) which own their own mobile network and MVNO (Mobile Virtual Network Operators) which provide customers with their service by using MNO's network. In 2022, the total number of MNO were 4, representing 86% market share and the total number of MVNO were about 1,700 representing 14% market share. The largest player in the market is Nippon Telegraph and Telephone Corporation (NTT), a company where about 34% of its shares are owned by governmental agencies and foreign investors are prohibited from owning one-third or more of its voting rights.

The broadcasting market in Japan also consists of private companies under a regulated market requiring a business license in which foreign investors are prohibited from owning one-fifth or more of their voting rights. A large exception is Japanese Broadcasting Corporation (generally called NHK), which is the only national broadcaster financially supported by public fees collected from viewers. The postal service in Japan is essentially dominated by Japan Post Co., Ltd. All the shares of Japan Post are owned by Japan Post Holdings Co., Ltd., which also has subsidiaries operating postal savings and postal insurance and about 34% of its shares are owned by governmental agencies.

H. Describe the public services—i.e., water, electricity and gas. Are they publicly or privately owned?

Generally, water services in Japan are predominantly provided by each local government. Recently, in order to maintain proper water infrastructure, regional partnership among local governments and public-private partnership are promoted.

Electricity and gas services were historically regulated and predominantly provided by the designated private companies area by area. However, retail business of electricity and gas was deregulated and is currently open to other service providers.

II. General Considerations

A. Investment policies

1. Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment?

Japan generally welcomes investment from foreign countries. Recently, the Japanese Government rigorously promotes foreign direct investment. Basic Policy on Economic and Fiscal Management and Reform 2023 adopted by the Cabinet in June, 2023 and Action Plan for Attracting Human and Financial Resources from Overseas adopted by the Council for Promotion of Foreign Direct Investment in Japan in April, 2023 set the inward foreign direct investment target of 100 trillion JPY in

2030 and aim to achieve it at an earliest date. JETRO (the Japan External Trade Organization) is a government-related organization that works to promote mutual trade both inbound and outbound and investment between Japan and the rest of the world. JETRO's website is <https://www.jetro.go.jp/en/>. The Foreign Exchange and Foreign Trade Act (FEFTA) regulates foreign investment into Japan. Under FEFTA, a broad range of foreign direct investments is subject to a prior notification or an ex post facto report (retrospective report). These notification and report must be submitted to the relevant ministries through the Bank of Japan (BOJ)..

2. What is the rate of inflation?

In 2022, the rate of inflation in Japan, based on consumer price index (total), was 2.5% compared with the previous year (-0.2% in 2021 and 0.0% in 2020).

3. Explain any sector exceptions, incentives or restrictions on foreign investment

Prior Notification under FEFTA.

Under FEFTA, a foreign direct investment in certain businesses designated as critical to national security, public safety, public infrastructure or Japan's economy (Designated Business Sector) requires prior notification.

Designated Business Sectors include, but not limited to, weapons, aircrafts, nuclear facilities, space, dual-use technologies, medicine and medical devices, semiconductor supply chain, automotive or stationary lithium-ion battery supply chain, cybersecurity, electricity, gas, telecommunications, water supply, railways, oil, heat supply, broadcasting, public transportation, biological chemicals, security services, agriculture, forestry and fisheries, leather manufacture, air transportation and maritime transportation. The government is actively expanding the scope of the Designated Business Sector recently.

Activities requiring prior notification as foreign direct investments include the following:

- Acquisition of 1% or more of voting rights or issued shares in a publicly traded company engaged in any Designated Business Sector.
- Acquisition of any number of issued shares in a non-publicly traded company engaged in any Designated Business Sector.
- Exercise of voting rights to appoint the foreign investor or its Closely Related Person as a director or a statutory auditor of a company engaged in any Designated Business Sector (in the case of a publicly traded company, only if a foreign investor owns 1% or more of its voting rights).
- Proposal and Exercise of voting rights to transfer or dispose of a Designated Business Sector (in case of a publicly traded company, only if a foreign investor owns 1% or more of its voting rights).
- Acquisition of a Designated Business Sector from a Japanese resident through a business transfer, a corporate split or a merger.

The scope of "Closely Related Person" is prescribed in detail by the relevant Order.

The exemption for the prior notification requirement is generally available to foreign investors as long as the following conditions are complied with;

- A foreign investor along with its Closely Related Persons will not become a director or a statutory auditor of a target company which is engaged in any Designated Business Sector;
- A foreign investor will not propose the transfer or disposition of a Designated Business Sector at a shareholders' meeting of a target company; and
- A foreign investor will not access non-public technological information of the target company related to a Designated Business Sector.

With respect to a foreign direct investment in a Core Sector (designated among Designated Business Sectors as having greater significance to national security and requiring more strict examination), the exemption is available only in the case the target company is a listed company and, in order to be exempted, additional conditions will be required. Notwithstanding the above, a broader blanket exemption is available to financial institutions that are subject to supervision under financial regulatory laws of Japan or other jurisdictions for acquisition of voting rights or issued shares in a publicly traded company.

The waiting period for prior notifications is 30 days which can be shortened to 14 days, or extended up to five months if the regulator determines that additional information or time to review is necessary.

Ex Post Facto Report under FEFTA.

A foreign direct investment requiring an ex post facto report includes an acquisition of 10% or more of the voting rights or shares of a company not engaged in a Designated Business Sector and an investment activity related to a Designated Business Sector but exempted from the prior notification requirement. In addition, when a foreign investor has commenced share acquisition or some other type of transactions with respect to which it filed a prior notification, it needs to submit an ex post facto report of the execution thereof.

An ex post facto report is required to be submitted within 45 days from the closing of the foreign direct investment.

Other Restrictions.

In addition to the requirements under FEFTA, certain business and industry legislation restricts the maximum voting rights of the aggregate portion held by foreigners for companies engaging in specific business. Examples of the business and their maximum voting rights are as follows:

- The Civil Aeronautics Act (less than one-third for air-transport service providers)、貨物
- The Broadcast Act and the Radio Act (less than 20% for fundamental-broadcasting service providers)
- The Nippon Telegraph and Telephone Act (less than one-third for Nippon Telegraph and Telephone Corporation (NTT))
- The Consigned Freight Forwarding Business Act (less than one-third for consigned freight forwarding business operators)

A foreign investor is required to obtain a license under the relevant applicable law from the Japanese government before entering into certain types of business such as banking, insurance, securities, pharmaceuticals, etc. In obtaining such a license, the foreign investor may be required by the Japanese government to submit certain documents and written commitments regarding the scope of its business activities.

4. Describe de facto restrictions on investment, if any, such as bureaucratic discretion

There are no such de facto restrictions.

5. What are the sizes of the different markets?

Japan's GDP is about USD 4,200 billion, ranked 3rd in the world in FY 2022. Japan's regional economies have GDPs the size of other countries such as USD 1,600 billion for the Kanto region (including Tokyo), which is comparable to Australia, Korea and Mexico and USD 600 billion for each of the Kinki region (including Osaka) and the Chubu region (including Nagoya), which is comparable to the Belgium, Sweden and Argentina in FY 2019.

6. What types of businesses are conducted in the country?

The tertiary industry accounted for 78.4% of the total Japanese GDP in 2021, and the primary and secondary industries accounted for 1.0% and 20.6%, respectively. Among the tertiary industry, major businesses include service (19.9%), wholesale and retail (13.7%), real estate (12.0%), and professional, technical and operational services (8.8%).

B. Diplomatic Relations

1. Explain any established diplomatic relations your country may have

Japan has well-established diplomatic relations and proactively addresses global issues. It has served twelve terms as a non-permanent member of the UN Security Council. It is a member of the G7 and G20 summit, the World Trade Organization, the Organization for Economic Cooperation and Development, and the Asia-Pacific Economic Cooperation. Japan has concluded 21 Free Trade Agreements, Economic Partnership Agreements and Related Initiatives.

2. Give addresses and contact information for the embassies or consulates in your country

Contact information for the embassies or consulates in Japan is available on the website of the

3. Are there prohibitions or restrictions on certain business dealings with the country?

There are no such prohibitions or restrictions.

4. Explain any travel restrictions to or within the country

There are no such restrictions.

C. Government

1. Explain your country's election system and schedule

The 1946 Constitution envisages a parliamentary cabinet system based on the separation of powers with the Emperor as the symbolic head of state without governmental powers. Supreme legislative power is vested in a bicameral legislature called the Diet, composed of the 465-member House of Representatives elected for four years unless dissolved by the Prime Minister, and the 248-member House of Councillors elected for six years with half of the seats being up for election every three years. The House of Representatives consists of 289 members elected from single-seat constituencies and 176 members by proportional representation by party from 11 electoral blocs. The House of Councillors consists of 100 members elected by proportional representation by party nationwide, and 148 members from 45 multi-seat prefectoral constituencies. The former's decisions prevail with respect to the choice of the Prime Minister, the budget and the ratification of treaties, and they can override the latter's by a two-thirds majority with respect to other matters, except for constitutional amendments, which require a two-thirds vote in both houses.

Executive power is vested in the Cabinet, consisting of the Prime Minister who is elected by the Diet and other ministers of state appointed by the Prime Minister. The Cabinet is answerable to the Diet, and the Cabinet will have to choose between resigning en masse or dissolving the House of Representatives in the event of a vote of no-confidence.

The Judiciary, with the Supreme Court at its apex, is independent of the other two branches of government; and it is given the power of judicial review over the acts of the Diet and the Cabinet. The Supreme Court Justices are appointed by the Cabinet and the appointment is reviewed by the people at the first general election for the members of the House of Representatives following their appointment. This review continues to be carried out every ten years.

2. Is the present government stable? Briefly explain your country's recent political history in the last decade.

The Liberal Democratic Party of Japan has been in charge of the government since the 1950s, except for a period from 2009 to 2012 during which the Democratic Party was in charge of the government.

3. Explain your country's judicial system

Japan initially fashioned its modern legal system after those of continental Europe with the introduction of a series of written codes and later on, as a result of the post-war American occupation, assimilated Anglo-American legal concepts.

Japan adopts the principle of a three-instance trial process. Japan's judicial institutions consist of (1) the Supreme Court; (2) high courts, whose primary function is appellate; (3) district courts, which are trial courts exercising general jurisdiction over all actions, criminal and civil; (4) family courts, which have exclusive jurisdiction over cases involving domestic relations and juvenile delinquency; and (5) summary courts, which have jurisdiction over civil cases where the disputed sum does not exceed JPY 1.4 million, and over certain light crimes.

Under the current system, all lawyers, including judges and public prosecutors, are graduates of the Legal Research and Training Institute administered by the Supreme Court. The Institute currently accepts about 1,500 trainees annually as selected through the National Bar Examination.

Practicing attorneys are required to register with at least one regional bar association, which is an autonomous professional organization affiliated with the Japan Federation of Bar Associations. Lower-court judges are career bureaucrats appointed for ten-year terms which are normally renewed. Public prosecutors are essentially public servants who serve until retirement.

4. Explain your country's legislative system

See 1 above.

D. Environmental Considerations

1. What is the public/government attitude toward environmental regulation?

The Ministry of the Environment has a major role in environmental administration including waste, environmental pollution, natural conservation and wildlife protection. Under many environmental laws, governors of prefectures are authorised to issue permits and accept applications and notifications. Certain laws explicitly authorise local governments to establish their own regulations but even without such authorisation, local governments may provide stricter or broader regulations than those under national laws.

2. Explain any environmental regulations

Japan has a series of environmental regulations including the Water Pollution Control Law, the Air Pollution Control Law, the Waste Disposal and Public Cleansing Law, the Soil Contamination Countermeasures Law and the Environmental Impact Assessment Law.

E. Intellectual Property

- Describe the law for the protection of intellectual property, including trademarks, copyrights, patents and know-how

Patents

Definition and legal requirements. The requirements under the Patent Act are as follows:

- Novelty
- Inventive step
- Susceptible to industrial application
- Not claimed in a prior application

Registration. The Japan Patent Office (JPO) is the regulatory authority for registration.

Enforcement and remedies. There are several levels of judicial courts that deal with infringement of patents:

- **First instance.** Tokyo/Osaka District Court
- **Appeal.** Intellectual Property High Court
- **Last instance.** Supreme Court

Remedies in infringement actions include injunctions (including measures necessary to suspend and prevent the infringement), compensation for damage and measures to restore credibility.

Defences to infringement actions include use for experimental or research purposes, invalidity of the right, prior user's right, lack of an infringement and exhaustion of the right.

Length of protection. Patent protection is effective on registration and expires 20 years from the application filing date. In the pharmaceutical and agrochemical industries, the patent term can be extended by a period not exceeding five years. Also, the patent term can be extended in certain occasions where there is a delay on the part of the JPO in examining the patent application.

Trademarks

Definition and legal requirements. Under the Trademark Act, the mark can be any character, figure, sign, three-dimensional shape, color (or any combination) or sound, as recognised by an individual's perception, that is used in connection with the goods or services for commercial purposes.

Unregistered marks can be protected under either the Unfair Competition Prevention Law or the Civil Code (or both, if it is widely-recognised or well-known). Registration is recommended for protection.

Protection. The JPO is the regulatory authority for registration.

Enforcement and remedies. There are several levels of judicial courts that deal with infringement of trademarks:

- **First instance.** The District Courts related to the case and the Tokyo/Osaka District Court
- **Appeal.** The High Courts with jurisdiction over the first instance courts (the Intellectual Property High Court instead of the Tokyo High Court)
- **Last instance.** The Supreme Court

Remedies in infringement actions include injunctions, compensation for damage, and measures to restore credibility.

Defences to infringement actions include the use of an individual's own name, famous abbreviations, invalidity of the right, prior user's right, no infringement and exhaustion of the right.

Length of protection and renewability. Trademark protection is effective on registration and lasts for ten years. Registration can be renewed any number of times, by filing a renewal application and paying a fee.

Registered designs

Definition. Shape, pattern, color or any combination of them, of an item or a building or graphic image for use in the operation of a device or those displayed as a result of the device performing its function that has an aesthetic sense is protected under the Design Right Act. The requirements are as follows:

- Novelty
- Creativity
- Industrial applicability
- Not identical or similar to any design previously filed

Registration. See *Patents* above

Enforcement and remedies. See *Trademarks* above

Remedies in infringement actions include injunctions and compensation for damage.

Defences to infringement actions include use for experimental or research purposes, use of vessels or aircraft passing through Japan and products existing in Japan before filing the application, invalidity of the right, prior user's right, no infringement and exhaustion of the right.

Length of protection and renewability. Registered design protection is effective on registration and expires 25 years from the application filing date. If the application for a registered design was filed on or before March 31, 2020, protection expires 20 years after the registration date.

Copyright

Definition and legal requirements. Under the Copyright Act, copyright arises automatically without registration upon the creation of thoughts or sentiments that are expressed in a creative way, and that fall into the category of literary, scientific, artistic or musical works.

Protection. Copyright is protected without registration. However, assignment of copyright cannot be claimed against a third party unless the transfer has been registered. The Agency of Cultural Affairs and the Software Information Center (SOFTIC) for computer program registration are regulatory authorities for registration.

Enforcement and remedies. See *Patents* above

Remedies in infringement actions include injunctions, compensation for damage, and measures to restore credibility.

Defences to infringement actions include reproduction for private or citation use, non-profit purposes, reporting a current event, judicial proceedings, no infringement and exhaustion of the right.

Length of protection and renewability. In general, a copyright is effective at the time of creation of the work and continues for 70 years following the death of the author in the case where the author is an individual (for a cinematographic work, 70 years from publication) or 70 years after publication in the case where the author is an entity.

Unregistered designs

Definition and legal requirements. Under the Unfair Competition Prevention Act, designs can be protected as a configuration of goods (meaning the external and internal shape of goods and the pattern, color, gloss, and texture combined with the shape) if they can be determined by consumers in normal use. If a design is very distinctive and well-known, it can also be protected under the Copyright Act.

Enforcement and remedies. Remedies in infringement actions include injunctions and compensation for damage.

Defences to infringement actions include the following:

- Lack of imitation
- That the configuration is indispensable for ensuring the function of the goods.
- Expiration of the protection term
- Lack of knowledge
- Not being grossly negligent of the fact that the goods imitate the configuration of another individual's goods at the time the goods are acquired.

Length of protection

Protection under the Unfair Competition Prevention Act lasts for three years from the initial sale of the goods.

Confidential information

Definition and legal requirements. A trade secret is protected under the Unfair Competition Prevention Act if it consists of technical or business information that is useful for commercial activities and is kept secret and not publicly known.

Enforcement and remedies. Remedies in infringement actions include injunctions and compensation for damage.

Defences to infringement actions include the fact that the alleged trade secret does not meet the requirements, there is a lack of infringement, and that the trade secret was used or disclosed under a right acquired by the defendant.

Utility model right

Definition and legal requirements. See *Patents* above. However, the Utility Model Right Act only protects devices based on technical ideas using natural laws in connection with a device's shape, structure, or a combination of them.

Registration. See *Patents* above.

Enforcement and remedies. Since utility model right is registered without substantive review, a holder of a utility model right must obtain a technical opinion in favor of the holder from the JPO prior to enforcing the utility model right against an alleged infringer.

There are several levels of judicial courts that deal with infringement of utility model right:

- **First instance.** Tokyo/Osaka District Court
- **Appeal.** Intellectual Property High Court
- **Last instance.** Supreme Court

Remedies in infringement actions include injunctions and compensation for damage.

Defences to infringement actions include the following:

- Use for experimental or research purposes
- Invalidity
- Prior user's right
- No infringement
- Exhaustion.

Length of protection. Utility model right protection is effective upon registration and expires 10 years from the application filing date.

Plant breeder's right

Definition and legal requirements. The requirements are as follows:

- Novelty
- The propagating material or harvested material of the variety was not transferred in the course of business more than one year prior to the filing date in Japan or more than four years in case of a foreign application
- Earliest application
- The name of the variety is not confusingly similar with the name of other varieties.

Registration. The Ministry of Agriculture, Forestry and Fisheries is the regulatory authority for registration.

Enforcement and remedies. Remedies in infringement actions include injunctions (including measures necessary to suspend and prevent the infringement), compensation for damage and measures to restore credibility.

Defences to infringement actions include the following:

- Use for experimental or research purposes
- Invalidity as abuse of right
- Patents relating to methods to raise the registered variety
- Prior user's right
- Exhaustion.

Length of protection. Plant breeder's right protection is effective on registration and lasts for 25 years after the date of registration (30 years for a perennial plant).

Layout-design exploitation right

Definition and legal requirements. Under the Act on the Circuit Layout of Semiconductor Integrated Circuits, a layout-design of semiconductor integrated circuits that was created by an applicant or his predecessor is protected if any semiconductor integrated circuit that was manufactured by using the layout-design under the authorization of the creator, etc. has not been assigned, leased and so on, more than two years prior to the filing date.

Registration. The Software Information Center (SOFTIC) is responsible for registration.

Enforcement and remedies. There are several levels of judicial courts that deal with infringement of layout-design exploitation right:

- **First instance.** Tokyo/Osaka District Court
- **Appeal.** Intellectual Property High Court
- **Last instance.** Supreme Court

Remedies in infringement actions include injunctions and compensation for damage.

Defences to infringement actions include the following:

- Use for analysis or evaluation purposes
- No infringement

- Exhaustion
- Not knowing that, and not being grossly negligent of the fact that the semiconductor integrated circuits were manufactured using a layout-design that was an imitation of the registered layout-design at the time the semiconductor integrated circuits are acquired.

Length of protection. Layout-design exploitation right protection is effective on registration and lasts for ten years.

Border Enforcement by Customs

In addition to enforcement by judicial courts, Japan Customs enforces goods infringing intellectual property right at the border. Upon approval of an application for suspension, Japan Customs will prohibit exportation, importation and transit of infringing goods such as counterfeit products.

- Does the country subscribe to international treaties? If so, please describe them.

Japan has signed major international treaties and agreements with respect to intellectual property including the following: Paris Convention, Arrangement of Madrid for the Repression of False or Deceptive Indications of Source on Goods, Patent Cooperation Treaty, Berne Convention, Universal Copyright Convention, Strasbourg Agreement concerning the International Patents Classification, Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights), Protocol Relating to Madrid Agreement concerning the International Registration of Marks, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, the Anti-Counterfeiting Trade Agreement, Patent Law Treaty and Trademark Law Treaty.

- Are there regulatory guidelines for licenses?

The Fair Trade Commission (JFTC) issued the “Guidelines for the Use of Intellectual Property under the Antimonopoly Act”.

III. Investment Incentives

- Explain any grants, subsidies or funds your country offers foreign investors

The Japanese Government generally aims to facilitate foreign investments and offers appealing incentives.

The incentives introduced in the immigration field in 2023 are the Japan System for Special Highly-Skilled Professionals (J-SKIP), whereby foreign nationals with certain academic background or professional career and annual income will be given, regardless of the existing point system, the status of “highly-skilled professionals and preferential immigration treatment, and the Japan System for Future Creation Individual Visa (J-Find), whereby foreign nationals who graduated certain high-ranked universities within 5 years will be granted a status of residence for job hunting and start-up preparation activities.

The national and local governments also provide various tax incentives and subsidy programs.

IV. Financial Facilities

- What types of financial institutions exist?

Japan's financial system is bank-centered and private depository institutions are grouped into city banks (4), trust banks (13), regional banks (62), second-tier regional banks (37), foreign banks (56) and other banks (17) (as of January 2023) and cooperative financial institutions in accordance with their areas of activity and fund-raising methods. With mergers since the 1990s spurred by liberalization and deregulation of the banking industry, there has been a major consolidation into three “Mega” banking groups (Mitsubishi UFJ Financial Group, Sumitomo Mitsui Financial Group and Mizuho Financial Group) providing a full line-up of financial services such as commercial banking, investment banking, securities trading, asset management, leasing, credit card and consumer loans. Although a number of regional banks have remained independent due to fragmented market structure and, as a result, major Japanese banks' shares in regional markets are relatively small, mergers

among regional banks have been accelerated recently due to their severe financial conditions. Recently, new types of banks focusing on internet banking and settlement services with low costs have developed. Such banks include subsidiaries of non-financial institutions such as operators of general merchandize stores, convenience stores and e-commerce.

A notable characteristic of the Japanese financial system is the major role of the Japan Post Group consisting of postal service business, banking business and life insurance business which was privatized in 2007 and the group holding company Japan Post Holdings Co., Ltd., simultaneously with its banking subsidiary and its life insurance subsidiary made initial public offerings in 2015. Japan Post Bank is the largest deposit-taking institution in the world, and it has over 220 trillion yen in assets under management. Its network is the most extensive of any financial institution in Japan with about 23,600 branches in 2023 (the number of branches of total banks nationwide is about 13,500).

The Japanese security exchanges are one of the major equity markets in the world in terms of market cap and trading volume. The Japan Exchange Group operates the Tokyo Stock Exchange focusing on cash equity markets and the Osaka Exchange focusing on derivatives markets and the Tokyo Commodity Exchange. After the restructuring of equity market in 2022, the Tokyo Stock Exchange currently operates four markets; the Prime Market (for companies with large market cap/liquidity investable to many institutional investors), the Standard Market (for companies with a base-line, standard level of market cap/liquidity), the Growth Market (for companies with a reasonable business plan to realize their high growth potential) and the TOKYO PRO Market (for professional investors only). The number of listed companies is 1,834 for the Prime Market, 1,440 for the Standard Market, 546 for the Growth Market and 79 for the TOKYO PRO Market (August 31, 2023).

As a result of mergers since the collapse of the asset bubble in 1990, Japan's securities industry is led by five major securities firms including subsidiaries of the major banking groups (Nomura Securities, Daiwa Securities, Mitsubishi UFJ Morgan Stanley Securities, SMBC Nikko Securities and Mizuho Securities). As a result of deregulation and development of information technology, securities firms providing their services only through the Internet has drastically increased in the retail market since the late 1990s.

V. Exchange Controls

FEFTA governs exchange control and currency regulations. In general, an *ex post facto* report (retrospective report) is required for payments to or the receipt of payments from foreign countries (and only for amounts of more than JPY 30 million). For payments made or received through a bank, the report must be submitted to the Ministry of Finance through the BOJ within ten days (alternatively, a monthly lump-sum report can be implemented by making a prior notification).

VI. Import/Export Regulations

A. Exports

1. Basic Policy on Exports from Japan

The basic policy on exports of goods from Japan is, in principle, to be free from restrictions except for the allowance of the minimum regulations and administrations that are required to (i) secure and maintain international peace and safety, (ii) maintain international trade balance, and (iii) secure sound development of foreign trade and the national economy. Details of the regulations are available on the website of the Ministry of Economy, Trade and Industry ("METI"): http://www.meti.go.jp/english/policy/external_economy/trade_control/index.html

2. Major Restrictions on Exports

Exports from Japan that are subject to permission by METI (the "Export Permission") are the 16 categories of goods that are listed for the purpose of maintaining international peace and safety. Those are goods related to items such as weapons, nuclear energy, biochemical weapons, and missiles. 15 categories out of the above 16 are categories that were agreed to be restricted internationally. The 16th category is the "Catch-All Regulation". When goods that are scheduled to be exported fall under this category due to their nature and are not scheduled to be exported to designated countries, they will be considered goods that may be used for developing weapons of

mass destruction, and Export Permission will be required for exporting such goods. Goods such as hi-tech materials, electronic materials, computers, communication devices, aviation devices, and marine devices are included in this 16th category if they are not included in the other 15 categories.

B. Imports

1. Basic Policy on Imports into Japan

The Japanese government has been liberalizing, as its basic policy, the importation of goods into Japan. The purpose of the liberalization is to open the Japanese market to foreign countries equally. Japan does not have a discriminatory liberalization policy.

2. Major Restrictions on Imports

Restrictions on imports into Japan are made on the grounds of ensuring the sound development of foreign trade and the national economy and compliance with treaties.

Under the FEFTA and its subordinate regulations, namely the Import Trade Control Order enacted by the Cabinet, import approval or acknowledgement is required for three types of importation: (a) importation of goods that are subject to an import quota system, under which the importer should obtain an import quota before the approval of METI; (b) importation of goods that are subject to the approval of METI without an import quota; and (c) importation of goods that are subject to the prior acknowledgement of the relevant minister of the Japanese government on the importation of such goods or a submission of a specific instrument to the customs authorities upon the clearance of such goods.

3. Customs Duties

In order to protect the Japanese consumer's interest and stimulate competitiveness of Japanese industries, tariffs are set as low as possible.

The current tariffs are available on the Japan Customs website:

<http://www.customs.go.jp/english/tariff/index.htm>

4. Taxation

Besides customs duties, both national and local consumption tax will be imposed on imported goods received from the bonded area, which must be paid by the recipient of such imported goods.

5. International Conventions

Japan is a member of various international organizations and conventions such as OECD, WTO, the Washington Convention, Montreal Protocol, Basel Convention, Wassenaar Arrangement, the Coffee Agreement 2001, and the International Cocoa Agreement 1993. Japan also has concluded 21 Free Trade Agreements, Economic Partnership Agreements and Related Initiatives.

VII. Structures for Doing Business

1. Establishment of a Subsidiary

A wholly-owned subsidiary of a foreign investor can be easily created, requiring only registration except for limited business activities subject to permission and license; and there is neither a minimum capitalization requirement nor a capitalization rule under the tax laws.

For this reason, a subsidiary is the most commonly used vehicle for doing business in Japan. The most common form of business vehicle in Japan is the joint stock company (*kabushiki kaisha*). The limited liability company (*godo kaisha*) is also becoming a popular business vehicle due to its simple governance structure and procedural requirements (among other things). Liability of investors of a joint stock company and limited liability company is generally limited to their capital contribution. Both a joint stock company and limited liability company are taxable entities for Japanese tax purposes.

2. Registration of a Branch

Foreign investors may decide to conduct business in Japan through branches. To do business in

Japan, branches need to be registered. A branch may be useful if, during the initial period, the Japanese operation is not expected to be profitable because the loss suffered by the branch may be deducted from income at the headquarters in the home country. For the purposes of liaison and technical services or sales and import-export, a branch office may be advantageous although it is usually difficult for a branch to obtain local finance.

3. Joint-Venture Company

A new company may also be created with one or more local partners. In choosing such partners, factors important for operating a business in Japan such as sales power, manufacturing skill or technologies of the partners should be carefully examined and taken into consideration. Having a prestigious partner may ease the fundraising difficulties of the joint venture.

4. Purchase of Stock or Assets of an Existing Company

Foreign investors may freely purchase shares or assets of either publicly traded companies or closely held companies subject to certain filing and notification requirements under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Antimonopoly Act), FEFTA and the Financial Instruments and Exchange Act (in case of a publicly traded company). This type of transaction is used because it saves time for entry into the Japanese market. In addition to simple share and asset transfers, the Companies Act provides flexible structures for acquisition of other companies such as a merger, a corporate split (spin-off) and a share-to-share exchange (creating a wholly-owned subsidiary).

The Antimonopoly Act prohibits business combinations including the acquisition of shares of another company, mergers and other forms of M&A transactions that substantially restrain competition in any particular field of trade, and requires a prior notification for certain business combinations. In brief, prior notification is required if all of the following thresholds are met:

Share transfer:

- Turnover of the purchaser group in Japan for the latest fiscal year exceeds JPY 20 billion;
- Turnover of the target and its subsidiaries for the latest fiscal year in Japan exceeds JPY 5 billion; and
- Voting rights newly surpass 20% or 50% after the acquisition.

Asset/business transfer:

- Turnover of the purchaser group in Japan for the latest fiscal year exceeds JPY 20 billion; and
- Turnover of the target business/assets generated total sales of more than JPY 3 billion in Japan for the latest fiscal year.

The waiting period is 30 days from receipt of a notification by the JFTC and maybe extended, but can be shortened.

The Guidelines to Application of the Antimonopoly Act Concerning Review of Business Combination provide standards for specifying particular markets and analysing whether a business combination substantially restrains competition. Among other provisions, the guidelines provide a safe harbor in the following forms:

- **Horizontal-type business combination.** This applies in the following cases:
 - the measure of market concentration levels (namely, Herfindahl-Hirshman Index (HHI)) after the combination is 1,500 or less;
 - HHI is more than 1,500 and 2,500 or less, and an increase in HHI is 250 or less; or
 - HHI is more than 2,500, and an increase in HHI is 150 or less.
- **Vertical-type business combination.** This applies in the following cases:
 - the market share is 10% or less; or
 - HHI is 2,500 or less, and market share is 25% or less.

Although a judgment by the JFTC is made based on a case-by-case analysis, if a business combination meets the safe harbor requirement, the effect of a business combination is not usually thought to substantially restrain competition in a particular market.

VIII. Requirements for the Establishment of a Business

A. Joint stock company

The following are explanations about the joint stock company (*kabushiki kaisha*/K.K.), which is the most common form of business vehicle in Japan.

Registration formalities

A K.K. is established by registration with the relevant regional office of the Legal Affairs Bureau. The registration application date can be the same as the date of establishment, and the company can conduct its business from this date.

The registration procedure for the establishment of a K.K. in Japan requires the following:

- Drafting of the articles of incorporation
- Obtaining the registration certificates and other necessary documentation for the incorporator
- Preparation of affidavits regarding the incorporator's profile and affidavits regarding the signatures of the incorporator's representatives
- Notarisation of the articles of incorporation by a Japanese notary public
- Payment of the full amount of capital
- Appointment of directors; the directors must investigate the legality of the company's formation.
- Application to the Legal Affairs Bureau for registration of establishment of the company; there is a registration tax of 0.7% of the amount of capital (minimum JPY 150,000).
- Obtaining the registration certificate and company seal registration certificate from the Legal Affairs Bureau

The K.K. must register the incorporation of the company on the commercial registry administrated by the Legal Affairs Bureau. The following information must be provided:

- Company name
- Location of headquarter and branch
- Method of public notice
- Business purpose
- Authorised number of shares
- Outstanding number of shares
- Amount of capital
- Restriction of transfer of shares (if any)
- Issuance of share certificates (if any)
- Directors' names and the addresses of any representative directors

Once the company has been registered on the commercial registry, a registration certificate will be issued. The certificate is also accessible via the Internet and by payment of a fee.

Share capital

There is no legal requirement for a minimum or maximum amount of capital for a K.K. All shares must be fully paid up at the time of issuance.

Non-cash consideration

Shares of a K.K. can be paid in kind. However, certain appraisal procedures by a court appointed inspector which require additional time and costs need to be followed unless any of the following exceptions is applicable:

- value of the assets is JPY 5 million or less
- the assets are publicly traded securities
- appraisal report by an attorney, a certified public accountant, a certified tax accountant or other relevant professionals is obtained.

Rights attached to shares

A company can issue different classes of shares with specific rights and obligations. Under the Companies Act, a company can issue classes of shares that have different terms only for the following categories:

- Dividend
- Distribution of residual value
- Voting right
- Requirement for approval of the company for the transfer of shares
- Put option by the shareholder
- Call option by the company
- Veto right
- Right to appoint directors and/or statutory auditors

Rights automatically attaching to common shares of a K.K. include the following:

- Right to vote at a shareholders meeting
- Right to receive a dividend
- Right to receive distribution of residual value

Management structure

A K.K. has a two-tier management structure of shareholders and directors. Shareholders exercise their management rights by voting at a general shareholders' meeting and can only decide on matters provided in the Companies Act and the company's articles of incorporation. Other management issues are delegated to the directors of the company.

A K.K. is required to have a minimum of one director, although in practice, many K.K.s establish a board of directors. If a board of directors is established, three or more directors are required; and of these directors, one or more must be appointed as a representative director, with authority to represent the company. In addition, either a statutory auditor (*kansayaku*) or an accountant (*kaikei-san'yo*) is required. Most K.K.s appoint a statutory auditor. Both a statutory auditor and an accounting auditor (*kaikei-kasanin*) are required for a K.K. with capital of JPY 500 million or more or total liabilities of JPY 20 billion or more.

In Japan, only a natural person can become a director. There are no nationality or residence requirements for directors.

Directors' liability

A director of a K.K. owes a fiduciary duty to the company. In general, the courts have adopted a business judgment rule to decide whether a director is complying with his fiduciary duty to the company; namely, courts ask whether he made a reasonable judgment based on the facts of the situation.

Parent company liability

Generally, a parent company is not liable for the obligations of its K.K. subsidiary. However, in exceptional cases where a K.K. has no substance standard (an office and other facilities necessary to conduct its main business) or a parent company abuses the corporate formality of the K.K. subsidiary, the corporate veil may be pierced. For example, if a company establishes a new subsidiary only to avoid its non-competition obligations or enforcement by its creditors, the corporate veil may be pierced. If the corporate veil is pierced, the parent company becomes directly liable for the obligations of the K.K. subsidiary.

Reporting requirements

Any changes to the registered items must be registered. The company must publicly notify its simplified balance sheet annually, after approval at the regular general meeting of shareholders. Companies must provide in its articles of incorporation and register a preferred method of public disclosure (namely, publishing in an official gazette, publishing in a daily newspaper or using an electronic notification method) at the time of incorporation (which can be changed afterwards).

B. Limited liability company

The following are explanations about limited liability companies (*godo kaisha/G.K.*).

Registration formalities

A G.K. is established by registration with the relevant regional office of the Legal Affairs Bureau. The registration procedure for the establishment of a G.K. in Japan requires the following:

- Drafting of the articles of incorporation
- Payment of the full amount of capital
- Application to the Legal Affairs Bureau for registration of establishment of the company. There is a registration tax of 0.7% of the amount of capital (minimum JPY 60,000).

Unlike K.K., notarisation of the articles of incorporation by a Japanese notary public is not required.

The G.K. must register the incorporation of the company on the commercial registry administrated by the Legal Affairs Bureau. The following information must be provided:

- Company name
- Location of headquarters and branch
- Business purpose
- Amount of capital
- names and addresses of members representing the G.K.
- names and addresses of executive managers of members representing the G.K.
- Executive members' names (if any)
- Method of public notice

Capital

There is no legal requirement for a minimum or maximum amount of capital for a G.K. All capital must be fully paid up at the time of issuance. Capital of a G.K. can be paid in kind and unlike K.K., no appraisal procedure is required for payment in kind.

Management structure

G.K. may flexibly design its management structure and provide it in the articles of incorporation. An investor in G.K. is called as a member (*shain*) and a G.K. may be established by one or more members. Executive member(s) (*gyomu shikko shain*) which manage operation of the G.K. may be appointed, which enables to make a part of the members be engaged in execution of the G.K.'s business and other non-executive members remain passive. A legal entity including a foreign corporation may be an executive member. If an executive member is a legal entity, a natural person needs to be appointed as an executive manager (*shokumu shikko sha*) who represents the executive member. An executive member and an executive manager owe fiduciary duty to the G.K. There are no nationality or residence requirements for an executive manager.

Reporting requirements

Any changes to the registered items must be registered. Unlike in a K.K., annual publication of balance sheet is not required.

IX. Operation of the Business

A. Advertising

The Act against Unjustifiable Premiums and Misleading Representations ("Premiums and Representations Act") generally regulates the content of advertisements. The Premiums and Representations Act prohibits misleading representations relating to the following:

- Quality (for standards and other particulars of goods or services)
- The terms and conditions of goods or services. Misleading representations are defined as those that could cause a general consumer to misapprehend that the goods or services being provided are better than the actual goods or services, or alternatively, are better than other providers of the same or similar types of goods or services.

The Premiums and Representations Act permits establishment of the Code of Fair Competition (namely, voluntary rules with respect to premiums and representations by a business entity or trade

association to be adopted when authorised by a competent authority). Currently, there are 79 industrial Fair Trade Conferences establishing Codes of Fair Competition for specific industries (including food, alcohol, commodities, household appliances, drugs and cosmetics, publication, automobiles, real estate and finance). While these Codes may not be legally binding, the contents generally lay out the current standard business practices in the industry.

B. Consumer Protection Laws

The Product Liability Act was enacted in 1994 and regulates product liability and product safety. It stipulates the liability of the manufacturer (for loss of life or injury to the body or the property of others) caused by a defect in the product manufactured, processed or imported by the manufacturer. The Product Liability Act supplements the Civil Code and shifts the burden of proof of negligence to the manufacturer. The manufacturer will not be exempted from liability unless it can prove that the defect could not have been discovered due to the scientific or technical knowledge at the time when the manufacturer delivered the product. The right to damages under the Product Liability Act is time barred in the following cases:

- The consumer does not exercise the right within three years (five years in the case of death or bodily injury to persons) from the time that he became aware of the damages and the party liable for the damages.
- Ten years have lapsed from the time when the manufacturer delivered the product.

C. Price Controls

Joint conduct (including cartels and bid rigging) and unilateral conduct (including predatory pricing and resale price maintenance without justifiable grounds) are prohibited in Japan. A number of the guidelines issued by the JFTC provide standards and examples to demonstrate whether certain types of conduct would violate the Antimonopoly Act.

Unreasonable restraint of trade (including cartels and bid rigging), private monopolisation, and certain unfair trade practices in violation of the Antimonopoly Act are subject to administrative surcharges and criminal penalties. A leniency program for surcharge reduction or immunity is also available.

D. Reductions or Return on Capital

- Can capital be repatriated while the corporation still exists?

In principle, a K.K. has to retain the amount corresponding to its paid-in capital and that portion may not be distributed to its shareholders. However, if a K.K. conducts a capital decrease requiring shareholders' approval and a procedure to protect creditors, the decreased amount would be credited to a surplus and could be distributable. It is noted that if certain creditors object to the capital decrease, the company has to repay its debt or provide such creditors with specific collateral protection.

Although a capital decrease of a G.K. also requires a procedure to protect creditors, a G.K. may allocate all or a part of its paid-in amount to capital surplus instead of capital and a decrease of a G.K.'s capital surplus does not require a procedure to protect creditors.

E. Sale of Goods

There are no general laws regulating marketing agreements. However, there is a useful guideline issued by JFTC called the Antimonopoly Act Guidelines to Distribution Systems and Business Practices.

F. Agency and distribution

There are no special laws or regulations in Japan that regulate agency and distribution agreements.

However, there are a number of judicial precedents where the validity of the termination of agency and distribution agreements has been disputed. Courts rule on a case-by-case basis and no unified standards have been set. However, in many cases, regardless of the provisions of agency and distribution agreements, courts have required suppliers to allow for certain grace periods before the termination of their agreements in order for the agent/distributor to establish another business or to recover their investment they made for the supplier.

The aforementioned JFTC Antimonopoly Act Guidelines to Distribution Systems and Business

Practices provide cases where employing exclusive distributorship agreements are considered an unfair trade practice under the Antimonopoly Act.

G. Franchising

There are no special laws and regulations in Japan that generally regulate franchise agreements.

The Act for Promotion of Small and Medium Retail Business requires franchisers in retail business to deliver to franchisees the material terms of their franchise agreement in writing and to explain them before entering into the agreements. These terms include provisions regarding the following:

- Deposits to be paid by a franchisee
- Terms of sale of products by a franchiser to a franchisee
- Management instruction by a franchiser
- Display of trademark and trade name (among others) licensed to a franchisee.
- Term, renewal and termination of the franchise agreement

The JFTC Antimonopoly Act Guidelines to Franchise Systems provide cases where a franchise agreement is considered an unfair trade and becomes subject to the Antimonopoly Act.

X. Cessation or Termination of Business

A. Liquidation

Under the Companies Act of Japan, the winding up of a K.K. and a G.K. consists of dissolution and the following liquidation process. Upon payment of all debts to the company's creditors and distribution of any remaining surplus to the company's investors (if any), liquidation procedures will be completed. Although the timeline for liquidation is highly dependent on the financial status of the company, generally speaking, without any complications, the dissolution and liquidation process requires 90-120 days.

B. General Consequences of Insolvency

Insolvency does not immediately result in bankruptcy or other insolvency procedures. However, the insolvent is usually left with no choice but to make a settlement with them for distribution of assets and liquidation or for rehabilitation for future payments, or to apply for relief under the insolvency laws. In addition, the creditors may initiate the insolvency proceedings against the insolvent debtor. There is no minimum debt-to-capital ratio that triggers recapitalization or insolvency procedures. In many cases, however, if a company has indebtedness in excess of its assets, and the company is unable to repay its debts only by the proceeds arising from its business, foreign investors recapitalize in order to continue business or liquidate in order to withdraw business without dispute with local creditors.

C. Insolvency Laws

1. Bankruptcy Law (*Hasan Ho*)

Upon the occurrence of a bankruptcy event, such as general suspension of payment, either creditors or the debtor may file a petition for bankruptcy with a court. Upon adjudication of bankruptcy, the court shall appoint a trustee in bankruptcy, and the right to manage and dispose of the bankrupt estate shall vest exclusively in the trustee in bankruptcy. The trustee in bankruptcy sells all of the assets, and all proceeds shall be distributed to creditors. Upon completion of the bankruptcy procedure, the bankrupt company is dissolved and liquidated.

2. Civil Rehabilitation Act (*Minji Saisei Ho*)

Under the Civil Rehabilitation Act, if a bankruptcy event occurs or is likely to occur, the debtor may file a petition with a court for the Civil Rehabilitation procedure, proceed with the Civil Rehabilitation procedure while continuing its business and prepare a Civil Rehabilitation Plan by itself under supervision of a supervisor appointed by the court. In order for a Civil Rehabilitation Plan to be approved, consent of both (i) a majority (headcount) of the rehabilitation creditors who attend a creditor meeting and (ii) rehabilitation creditors with not less than a half of the total amount of the rehabilitation claims are required.

Upon the ratification of the Civil Rehabilitation Plan, rehabilitation claims are exempted in accordance

with the amount described in the Civil Rehabilitation Plan, and the debtor shall make repayment in accordance with the schedule described in the Civil Rehabilitation Plan.

3. Corporate Reorganization Act (*Kaisha Kosei Ho*)

If a K.K. is unable to make payments or faces the risk of bankruptcy, it may file a petition with a court for corporate reorganization. Upon ruling, the court shall appoint a trustee who has the rights to administer the business as well as to manage and dispose of the assets of the corporation. If a reorganization plan is accepted by special majority of several classes of creditors and approved by the court, the reorganization plan will be effective. If reorganization is not possible, bankruptcy procedures shall be commenced. It is noted that the reorganization plan may bind security interest holders of the company. Such a strong effect is only allowed under the Corporate Reorganization Act which is applicable only to a K.K..

4. Special Liquidation (*Tokubetsu Seisan*) under the Companies Act

In certain circumstances, such as where there is a suspicion of indebtedness in excess of assets, a court may order commencement of special liquidation of a K.K. in liquidation proceedings upon petition by a creditor, liquidator, statutory auditor or shareholder. The special liquidation must be made under supervision by the court. If the necessary approval from the creditors for the repayment plan under the special liquidation cannot be obtained, bankruptcy procedures shall be commenced.

XI. Labor Legislation, Relation, and Supply

A. Laws governing employer/employee relations

The main laws regulating employment relationships and the protection of workers include the following:

- **Labor Standards Act.** This provides the minimum standards for the conditions of employment.
- **Labor Contracts Act.** This regulates fundamental rules on employment contracts.
- **Minimum Wage Act.** This provides for the minimum amount of wages to be paid by different prefectures and specific industries.
- **Industrial Safety and Health Act.** This provides the minimum standards on working conditions relating to health and safety.
- **Industrial Accident Compensation Insurance Act.** This provides an insurance system for accidents that occur during working hours.

The laws generally apply to all enterprises in Japan, regardless of whether the employer is Japanese or foreign, or whether the company is a foreign or Japanese-registered company. The laws also apply to foreign workers in Japan if the foreign worker meets the definition of "worker" under the Labor Standards Act, which is a person who is employed by a business and receives wages.

B. Employment regulations

In Japan, a written contract of employment is not required. However, at the time of employment, an employer is required to notify certain required employment conditions in writing to the employee which include:

- Term of the employment contract (or where there are no provisions relating to the term, the fact that there are no provisions relating to the term)
- Workplace
- Job description, including a description of the duties that the employee will have to perform.
- Working hours (including provisions relating to overtime, breaks and annual leave)
- Wages
- Grounds for termination of employment, retirement and dismissal

An employer who regularly hires ten or more employees is legally required to establish rules of employment and file with the Labour Standards Inspection Office. Even if an employer and his employees agree on employment conditions that do not meet the standards established by the employer's rules of employment, the agreed conditions will be invalid, and the standards established by the rules of employment must apply. The standards established by the rules of employment also

apply when the applicable employment contract does not provide for certain employment conditions.

Changing rules of employment and/or changing employment conditions in a way that disadvantages employees (without obtaining consent) is reviewed very strictly and it is found valid only when the changes are reasonable. This is determined after taking into account the necessity of such change and the disadvantages of such change for the employees.

C. Hiring and firing requirements

In Japan, many employment contracts historically have been indefinite-term contracts (with no fixed contractual term, generally referred to as regular employment (*seiki-koyo*)). It is very difficult for an employer to unilaterally terminate an indefinite-term employment contract.

Under the Labor Contracts Act and various court precedents, an employer can only unilaterally terminate an indefinite-term employment contract if the termination is based on objectively reasonable grounds and is socially justifiable. For example, objectively reasonable grounds can be if an employee commits a serious crime or continuously breaches the work rules, which can be deemed as reasonable, or a redundancy that meets certain criteria. All possible grounds for dismissal must also be clearly stated in the employment rules, for the dismissal of an employee to be valid. If the dismissal is valid, the employer must give at least 30 days' advance notice of dismissal or payment in lieu of notice.

Recently, employment contracts other than those with an indefinite-term (such as fixed-term, part-time and dispatch (*haken*), generally referred to as non-regular employment (*hi-seiki-koyo*)) are increasing. The Act on Improvement of Employment Management for Part-Time Workers and Fixed-Term Workers, the Act on Securing the Proper Operation of Worker Dispatching Businesses and Protecting Dispatched Workers, the Labor Contracts Act and other related laws and regulations provide protections for these non-regular employees which include the following:

- Unequal treatment between indefinite term employees and definite term employees is prohibited on the grounds that the employee is a non-regular employee.
- An employee with a fixed-term contract renewed for more than a five-year period has a right to require conversion of his/her contract to indefinite-term basis.
- Non-renewal of a fixed-term contract which has been repeatedly renewed is subject to review under similar standards as termination of an indefinite-term contract (see above).

D. Redundancies

There are no laws or regulations that directly regulate redundancies and mass layoffs. However, the objective-reasonable-grounds test described above applies in determining the validity of the termination of each employment contract as a result of redundancies and mass layoffs. In addition, there is considerable precedent in case law that has established four criteria that must be observed when employees are made redundant in order for the redundancy to be reasonable:

- **Necessity.** The company must prove that redundancies are unavoidable and necessary in light of its business circumstances and needs.
- **Effort to avoid redundancy.** The company must prove that it has made reasonable managerial efforts to avoid redundancies (for example, reassigning staff and advertising for voluntary redundancies).
- **Reasonable selection.** The company must prove that reasonable standards were used when selecting the employees to be made redundant, and that the redundancies were carried out fairly.
- **Reasonable process.** The corporation must prove that it sufficiently consulted with workers and labor unions.

XII. Tax on Corporations

A. Tax resident business

If a tax resident business vehicle is considered to be a domestic company under the Corporation Tax Act, all income (including domestic and foreign-sourced) is taxed in Japan. However, foreign companies are only taxed on domestic-sourced income. Whether a company is considered to be domestic or foreign under the Corporation Tax Act is determined by the location of its headquarters.

B. Non-tax resident business

If a foreign company has a permanent establishment in Japan, it must file a tax return with the competent Japanese authority. However, foreign companies without a permanent establishment in Japan are generally subject to withholding tax only, except for taxation on certain income.

C. Main taxes

The main taxes that apply to a Japanese company in FY 2022 include the following:

- **Corporation tax.** This is a national tax.
- **Local Corporation tax.** This is a national tax, for the purpose of a more balanced redistribution of tax revenue by the national government to local governments and municipalities.
- **Corporation inhabitant tax.** This is a local tax. It consists of prefectural tax and municipal tax.
- **Enterprise tax.** This is a local tax.
- **Special enterprise tax.** This is a local tax.

D. Tax rates

Tax rates of Japanese corporations can vary due to the inclusion of the amount of capital, the amount of taxable income and the location of the headquarters and they are periodically reviewed.

The effective tax rate released by the Ministry of Finance as applied to a Japanese corporation after FY 2018, is 29.74%.

E. Tax treaties

Japan has 72 tax conventions (a convention principally for the elimination of double taxation and the prevention of tax evasion and avoidance) applicable to 79 jurisdictions in September 2023.

F. Thin capitalisation

There are thin-capitalisation rules in Japan. If the ratio of loans to capital of a Japanese company exceeds a certain amount (for example, when the amount of loans is greater than or equal to three times the amount of capital held by a foreign parent), the interest paid corresponding to the exceeding portion of the loans cannot be deducted as an expense for tax purposes.

In addition, to prevent tax avoidance by utilising loans, there are “excessive interest payment rules. The rules provide that if the amount of net interest paid by a Japanese company is more than 20% of its adjusted income, the excess amount must not be deducted as an expense. There are some limited exceptions, as follows:

- Amount of net interest paid is JPY 20 million or less; or
- Total amount of net interest paid by a Japanese company and its controlling or controlled affiliates in Japan is not more than 20% of its adjusted income.

G. Controlled foreign company

The profits of a foreign subsidiary are imputed to the income of its Japanese parent and taxed in Japan if:

the foreign subsidiary is a paper company, a de facto cash box company or located in a blacklisted jurisdiction and the applicable tax rate is less than 30%; or

the foreign subsidiary does not meet any of the following economic activity standards and the applicable tax rate is less than 20% (if all of the standards are met, only certain passive income of the foreign subsidiary is imputed):

- A main business standard (as one of examples, the company's main business is not shareholding)
- A substance standard (the company has an office and other facilities necessary to conduct its main business)
- An administration standard (the company administers, controls and manages the business on its own)
- Either a location standard (the company conducts its main business mainly in the country of its

location) or a non-affiliate standard (more than 50% of the company's transactions are with non-affiliates) depending on its main business

H. Transfer pricing

There are transfer pricing rules in Japan. If a transaction price between related parties is different from that of a transaction on an arm's-length basis, the tax authority can recalculate the income of the company and impose taxes as if the transaction had been conducted at arm's length.

The methods used to calculate the arm's-length price in Japan are in line with those adopted under the Transfer Pricing Guideline of the Organisation for Economic Cooperation and Development:

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Transactional net margin method
- Profit split method
- Discounted cash flow method

To mitigate the risk of taxation by the transfer pricing rules, advanced pricing arrangement (APA) is available at the National Tax Agency (both unilateral APA and bilateral APA are available).

I. Taxes on dividends

Dividends paid

Dividends paid to a non-resident of Japan or a foreign corporation are subject to withholding tax. In general, the tax rate is 20.42%. If a lower rate is provided in a tax treaty between Japan and the country of location of the recipient, it will be applicable.

Dividends received

Generally, the amount of dividends received from foreign companies is included in the taxable income of the Japanese company. To avoid double taxation, if a Japanese company receives dividends from a foreign company of which 25% or more of its shares are held by that Japanese company for a period of six months or more, 95% of the dividends received will not be included in its income. If a different shareholding ratio is provided for in a tax treaty, that ratio will apply.

XIII. Tax on Individuals

A. Japanese resident

Under the Income Tax Act, all income (domestic and foreign-sourced) of a Japanese resident is taxed in Japan. A Japanese resident is defined as either of the following:

- **An individual with an address in Japan.** An address is defined as an individual's main place of living and is judged on objective facts. For example, the address of an individual residing in several countries is determined by the individual's job or employment agreement.
- **An individual with domicile in Japan for one year or more.** If an employee is a non-permanent resident in Japan (but does not have Japanese nationality) and has an address or domicile in Japan for five years or less during the previous ten-year period, only domestic sourced income and foreign sourced income that is paid in Japan or transmitted to Japan is taxed.

B. Tax on income

Income tax is a national tax and the competent authority is the National Tax Agency. In 2022, the tax rate for income tax is progressive from 5% to 45%, corresponding to the amount of income. The income tax rates on taxable income are as follows:

- JPY 1,950,000 or less: 5%
- More than JPY 1,950,000 and JPY 3,300,000 or less: 10%
- More than JPY 3,300,000 and JPY 6,950,000 or less: 20%

- More than JPY 6,950,000 and JPY 9,000,000 or less: 23%
- More than JPY 9,000,000 and JPY 18,000,000 or less: 33%
- More than JPY 18,000,000 and JPY 40,000,000 or less: 40%
- More than JPY 40,000,000: 45%

To calculate an employee's taxable income, a fixed amount (referred to as a deemed expense) is deducted from the employee's gross salary.

In addition to normal income tax, a special reconstruction income tax for recovery programs for the Great East Japan Earthquake in 2011 is taxed from 2013 to 2037. The tax rate is 2.1% of the amount of income tax imposed on an individual.

Individual inhabitant tax is a local tax and the competent authority is the governor of the local government. Individual inhabitant tax is imposed by the local government where an employee registers as an inhabitant on January 1 of each year. Individual inhabitant tax consists of a per income levy and per capita levy. The rate and amount vary between regions. In 2022, the tax rate for per income levy in Tokyo is 10% of taxable income and the amount for per capita levy is JPY 5,000.

An employer must withhold income tax and individual inhabitant tax from the monthly salary of their employees and, in general, pay it to the relevant tax authorities by the tenth day of the following month. An employee does not have to submit an annual tax return if their annual salary is JPY 20 million or less and there is no other source of income. This is because the payment of income tax and individual inhabitant tax will be completed by a year-end adjustment made by the employer.

C. Social security and welfare system contributions

There are four different types of social security systems that companies are legally obliged to participate in:

- Employee pension insurance
- Health insurance and nursing care insurance
- Unemployment insurance
- Workers accident compensation insurance

Health insurance is divided into two types of insurance—health insurance managed by the government and a health insurance association managed by a private organisation, established for a specific industry or company. Premiums for health insurance managed by the government are different for each prefecture. Generally, premiums for health insurance associations are lower than health insurance managed by the government. In addition, an employee between the ages of 40 to 64 must pay the premiums for nursing care insurance.

The following are the standard premiums of each social security system and the amount to be paid by the employer and employee in FY 2023. The rates are reviewed periodically.

- Pension insurance:
 - Total premium (% of salary and bonus): 18.300%
(Each of employer and employee contribute half of the premium)
- Health insurance:
 - Total premium (% of salary and bonus): 10.00% (Tokyo);
(Each of employer and employee contribute half of the premium)
- Nursing care insurance:
 - Total premium (% of salary and bonus): 1.82%;
(Each of employer and employee contribute half of the premium)
- Employment insurance:
 - Total premium (% of salary and bonus): 1.55%;
 - Employer contribution: 0.95%; and
 - Employee contribution: 0.6%.
- Workers accident compensation insurance:
 - Total premium (% of salary and bonus): from 0.25% to 8.8% (depending on business);
(Employer contributes all of the premium)

In addition, an employer must pay the following contributions to child allowance which is a type of tax but is to be collected with pension insurance.

- Contributions to child allowance:
 - Total premium (% of salary and bonus): 0.36%;
(Employer contributes all of the premium)

An employer must withhold the amount of social security and welfare system contributions to be paid by each employee from his/her monthly salary and pay it, together with the contributions to be paid by an employer to the relevant competent authorities. The amount paid by an employee through an employer is deducted from his/her gross salary in calculating tax income.

XIV. Other Taxes

Taxes on Property. Taxes on property include municipal fixed-assets (real estate) tax, municipal city planning tax and prefectural automobile tax.

Taxes on Consumption. This category of tax includes national and municipal consumption tax (similar to value-added tax), national liquor tax and national gasoline tax, which are imposed in connection with sales of goods and provisions of services. The current rate of consumption tax is 10% (the reduced tax rate of 8% applies to food and drink excluding alcohol and daily newspaper).

Taxes on Transactions. This category of tax includes national stamp tax.

XV. Immigration Requirements

The fundamental legislation which governs immigration matters and procedures in Japan consists of the “Immigration Control and Refugee Recognition Act” (the “Immigration Control Act”) and some regulations relating to immigration control, such as ministerial ordinances, notices and guidelines issued by the Ministry of Justice.

Under the Immigration Control Act, foreign employees must obtain a working visa allowing them to work in Japan during their stay. The working visa must relate to their intended area of employment. The following is a general outline of the principal statuses of residence of workers;

Investor/Business Manager
 Engineer
 Specialist in Humanities/International Services
 Intra-company Transferee
 Legal/Accounting Services
 Skilled Labor

The Immigration Bureau discretionally decides the period of stay for these working statuses as three months, one year, three years or five years, depending on the granted status of residence. The standard processing period to obtain a working visa is between one and three months. No government fee is required to apply for a working visa.

In order to promote entry of highly skilled foreign professionals (i.e., foreign nationals who have outstanding talents or abilities to offer in the fields of academic research activities, advanced specialized/technical activities, and business and management activities), a point-based system was introduced. Under the point system, foreign nationals who have satisfied certain requirements shall receive preferential treatment such as preferential processing of immigration procedures and permission for their parents, etc. to accompany them to Japan according to the amount of points they earned. In addition to the point-based system, new systems, J-SKIP and J-Find, have been introduced where preferential immigration treatment is given to highly-skilled professionals and newcomers with high potential (See III above).

XVI. Dispute Resolution

A. Arbitration

1. General

Arbitration is recognized under Japanese law as a legitimate method for settling disputes. However,

arbitration generally is not a popular method of dispute resolution in Japan except in the fields of international transactions, maritime transactions and domestic construction disputes.

2. Arbitration Institutions

Among various institutions that administrate international commercial arbitration, the Japan Commercial Arbitration Association, the local arbitration institution in Japan, is often used by Japanese parties in addition to other international arbitration institutions such as the International Chamber of Commerce and Singapore International Arbitration Center. The Japan Shipping Exchange solely handles maritime disputes. The Japan Intellectual Property Arbitration Center handles arbitration on disputes involving intellectual property and also handles dispute resolution procedures for ".jp" domain names. Each arbitration institution has its own detailed rules of arbitration and lists of arbitrators.

3. Procedure under Arbitration Act

The general arbitration procedures relating to civil and commercial matters were set out in the Arbitration Act, which is modeled on the UNCITRAL Model Law on International Commercial Arbitration. The Arbitration Act principally applies to an arbitration procedure of which the place of arbitration is in Japan. The contents of the current rules are briefly laid out below:

Appointment of Arbitrators: The parties are free to determine the number of arbitrators and the method of appointment. In the absence of agreement, where there are two parties to the dispute, the number of arbitrators shall be three.

Procedures: Before making an award, the arbitral tribunal may hold oral hearings to have the parties produce evidence or state their opinions. In the absence of an agreement between the parties on the procedures to be followed by the arbitral tribunal, the arbitral tribunal may determine the procedures to the extent that such procedures do not conflict with the law.

Awards: Unless otherwise agreed between the parties, the reasons for the decision shall be stated in the award. The award shall not be subject to judicial review. The award shall have the same effect as a judgment and may be enforced upon obtaining an enforcement order from the competent court.

Appeal from Awards: No appeal is allowed from an award. However, the award may be annulled by the court based on the limited grounds provided under the Arbitration Act that are almost identical to those under the Model Law. The period for seeking annulment is three months from the date of notice of the award.

4. International Commercial Arbitration

While the Arbitration Act applies to both domestic and international arbitration, it has introduced a set of provisions specifically concerning international arbitration, such as language to be used in the arbitral proceedings and the award, applicable substantive law and certain requirements for the recognition and enforcement of foreign arbitral awards.

The requirements for the recognition and enforcement of foreign arbitral awards follow those provided for by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, to which Japan is also a party.

B. Court System

1. Organization of Courts

Supreme Court

The Supreme Court acts as the final appellate court. There are fifteen justices of the Supreme Court. They divide themselves into three petty benches each consisting of five justices. Only exceptional cases are tried and decided by the grand bench consisting of all the justices, which include:

- (i) cases on appeal involving a constitutional issue where there is no existing precedent of the Supreme Court;
- (ii) cases on appeal in which a petty bench has found it appropriate to overrule a precedent of the Supreme Court; and

- (iii) other cases that a petty bench has referred to the grand bench because it considered them of great importance.

High Court

The high courts usually act as intermediate appellate courts, except that (i) they act as a court of final instance in minor civil cases, and (ii) they have original jurisdiction over insurrection cases, as well as over certain types of administrative cases, such as appeal on decisions by the Japan Patent Office. The high court hears cases in a three-judge court.

District Court and Summary Court

Civil cases are tried at the first instance either by a summary court or by a district court. Cases involving JPY 1.4 million or less are under the jurisdiction of the summary court. A summary court is a single-judge court. In a district court, cases are tried either before a single judge or before a panel of three judges, depending on the importance and complexity of the case. The district courts also have appellate jurisdiction over the decisions of the summary courts. The institutions of jury and assessor do not exist in Japan, although a system of citizen participation (*saiban-in*) in certain criminal trials has been introduced.

Family Court

The Family courts have exclusive jurisdiction over cases involving domestic relations and juvenile delinquency.

2. Appeal

Japanese law provides for two opportunities to appeal against a decision of a lower court, the first appeal being called *koso* and the second *jokoku*. In civil cases, the party who lost the case in the first instance may file a *koso* appeal within two weeks after the judgment is served on the appealing party for an alleged error in fact-finding as well as for an alleged error in law.

The *koso* appeal has the effect of re-opening the case in the second instance. The appellate procedure is a continuation of the first instance, and further evidence can be usually examined.

The grounds for a second appeal, *jokoku* appeal, in civil cases are limited to an error in the interpretation of or other violation of the Constitution, and an error in law that clearly affects the outcome of the case. A *jokoku* appeal may be made within two weeks after the judgment of the second instance court is rendered. The review of the third instance court is limited to points of law; the fact findings of the second instance court are binding.

3. Specialization of Courts

In order to more efficiently use resources and to decrease the amount of time required for determinations and judgments, cases in certain areas are being channeled to a few main courts.

This trend is particularly evident in the area of intellectual property (IP). The Tokyo and Osaka District Courts have exclusive jurisdiction over patent, utility model, circuit layout right and program copyright cases in the first instance, and the Intellectual Property High Court in Tokyo have exclusive jurisdiction in the second instance. Further, the Tokyo and Osaka District Courts have non-exclusive jurisdiction over trademark, design and copyright cases (excluding program copyright), neighboring right, publishing right, unfair competition and plant breeder's right) together with the local district courts with jurisdiction.

Another area in which such specialization is noticeable is insolvency. Although each district court has jurisdiction over petitions for insolvency procedures for a debtor within its territorial jurisdiction, there is a trend to grant the Tokyo and Osaka District Courts jurisdiction over large-scale insolvency proceedings in recognition of those courts' experience in handling such matters and their skilled staff.

Another such area is competition law. Any objection to a cease and desist order or administrative fine order issued by the JFTC shall be reviewed under the exclusive jurisdiction of the Tokyo District Court, to ensure that such matters be handled by experienced judges and staff.

Main business organisations and related government offices

Japan Business Federation (*Keidanren*)

W www.keidanren.or.jp/en/

Main activities. *Keidanren* is a comprehensive economic organisation with membership comprised of a number of representative companies of Japan.

Japan External Trade Organisation (JETRO)

W www.jetro.go.jp/en/

Main activities. JETRO is a government-related organisation that works to promote mutual trade and investment between Japan and the rest of the world.

Bank of Japan (BOJ)

W www.boj.or.jp/en/index.htm/

Main activities. The BOJ is the central bank of Japan. The BOJ's main objectives include issuing banknotes, carrying out currency and monetary control and ensuring the smooth settlement of funds among banks and other financial institutions.

Ministry of Justice (MOJ)

W www.moj.go.jp/ENGLISH/index.html

Main activities. The ministry is responsible for the establishment of and amendments to the Civil Code and Companies Act (among others). The Ministry is also responsible for commercial and real estate registration and immigration control.

Ministry of Finance (MOF)

W www.mof.go.jp/english/index.htm

Main activities. The ministry is responsible for the national budget, tax, customs and tariffs, treasury systems and foreign exchange control (among others).

National Tax Agency (NTA)

W www.nta.go.jp/foreign_language/index.htm

Main activities. The agency, as an external body of the Ministry of Finance, is in charge of assessing and collecting taxes.

Japan Patent Office (JPO)

W www.jpo.go.jp/e/index.html

Main activities. The JPO is the regulatory authority for the registration of intellectual property.

Japan Fair Trade Commission (JFTC)

W www.jftc.go.jp/en/index.html

Main activities. The commission is responsible for the enforcement of the Antimonopoly Act and related laws.

Ministry of Economy, Trade and Industry (METI)

W www.meti.go.jp/english/index.html

Main activities. The ministry is responsible for planning for the development of the economy and to ensure Japan has a stable supply of natural resources and energy.

Online resources

Japan External Trade Organisation (JETRO)

W www.jetro.go.jp/en/invest/incentive_programs/

Description. This website of JETRO introduces investment incentive programs provided by national and prefectural level.

Civil Laws Association

W www1.touki.or.jp/gateway.html

Description. This website managed by Civil Laws Association offers services for providing registered information of corporation and real estate in Japan. There is no English translation.

Ministry of Foreign Affairs (MOFA)

W www.mofa.go.jp/j_info/visit/visa/long/index.html

Description. This website of Ministry of Foreign Affairs provides comprehensive information about working visa in Japan.

MOF/Corporate Tax

W www.mof.go.jp/tax_policy/summary/corporation/084.htm

Description. This website of MOF provides updated information about corporate tax in Japan.

Japan Pension Service

W www.nenkin.go.jp/n/www/english/index.jsp

Description. This website of Japan Pension Service provides general information about social security system in Japan.

MOF/Customs Duty

W www.mof.go.jp/english/customs_tariff/index.html

Description. This website of MOF provides information about customs duty in Japan including the current applicable tariff schedule.

JFTC

W www.jftc.go.jp/en/policy_enforcement/index.html

Description. This website of JFTC provides general information about legislation related to the Antimonopoly Act.

Cabinet Office

W http://www.invest-japan.go.jp/en_index.html

Description. This website of Cabinet provides general information about foreign direct investment promotion.

(October 2023 Edition)