



# Japan

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### Guide To Doing Business Questionnaire:

#### Japan - Nishimura & Asahi

##### I. The Country At A Glance

###### A. What languages are spoken?

The 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, the Euro?

120.61 Japanese Yen (JPY) per US dollar (December 31, 2015)

131.77 JPY per Euro (December 31, 2015)

###### 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 at the Strait of Gibraltar. Its total area of 377,815 km<sup>2</sup> is slightly larger than Italy and about 80% of it is mountainous. The fabled Mt. Fuji within two hours of Tokyo is the highest peak in Japan at 3,776 meters. In the capital, Tokyo, the average daily maximum and minimum temperatures are 9.9°C and 2.5°C in January and 30.9°C and 23.7°C in August. The period of June 15 to July 15 is known as the rainy season due to almost daily rain showers that inundate the islands.

Japan's population of 127.08 million (2014) ranks tenth in the world. In terms of population density, Japan ranks seventh among countries with a population of 10 million or more. The life expectancy of Japanese people is the highest in the world at 80.2 years for men and 86.6 years for women (2013), and this is increasing the share of the over-65 age group which was 23.0% in 2010 and which is due to reach nearly 40% by 2050.

###### 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.

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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 flights in service is 51 including Haneda and Narita (Tokyo area), Chubu International (Nagoya area), Itami and Kansai (Osaka area), Shin Chitose (Sapporo area), and Fukuoka. Domestic railways are well-developed including the "Shinkansen" (super express), which connects major Japanese cities such as Tokyo, Osaka, Nagoya, and Fukuoka. There are a lot of 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. The largest player in the market is Nippon Telegraph and Telephone Corporation (NTT), where about 32% of its shares are owned by governmental agencies and foreign investors are prohibited from owning more than one-third of its voting rights. The broadcasting market in Japan also consists of private companies under a regulated market requiring a business license with a large exception for Japanese Broadcasting Corporation (generally called NHK) owned by the government. The postal service in Japan is basically 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. The Japan Post group was privatized in 2007, and the shares of Japan Post Holdings were listed on the Tokyo Stock Exchange in 2015.

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

Generally, water services in Japan are predominantly provided by local governments. Recently, private companies have partially entered into the market through an outsourcing agreement with local governments and private finance initiative.

Electricity and gas services for small customers (such as general household) are regulated and predominantly provided by the designated private companies area by area. However, electricity services will be deregulated in April 2016. The electricity and gas market for large customers is 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. JETRO (the Japan External Trade Organization) is a government-related organization that works to promote mutual trade 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. However, as most investments only require an acquiring foreign investor to file an ex post facto report (retrospective report), Japan is open to most foreign investment. The ex post facto report for acquisitions must be submitted to the relevant ministries through the Bank of Japan (BOJ) by the

15th day of the following month from the transaction. There are some exemptions for an ex post facto report (for example, a report is not required for an acquisition of less than 10% of the shares of a Japanese company which is valued 100 million JPY or less).

2. What is the rate of inflation?

In September 2015, the rate of inflation in Japan, based on average consumer prices, was 0.727% (0.357% in 2013 and 2.748% in 2014).

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

Under FEFTA, foreign investment in certain businesses and from certain countries requires prior notification. Businesses requiring prior notification include the following:

- **Related to national security.** These include the manufacturing of weapons, aircrafts, satellites, and atomic power plants.
- **Not suitable for investment.** These include agricultural, forestry, fisheries, mining, petroleum, utilities, manufacturing of leather products and ships, certain information and telecommunications practices and railroads.

The waiting period for prior notifications is 30 days, and maybe extended, but it is usually shortened to 14 days.

In addition, certain business and industry legislation restricts the maximum shareholding ratio of the aggregate portion held by foreigners for companies engaging in specific business. Examples of the business and their maximum shareholding ratios are as follows:

- The Civil Aeronautics Act (one-third for air-transport service providers)
- The Broadcast Act and the Radio Act (20% for fundamental-broadcasting service providers)
- The Nippon Telegraph and Telephone Act (one-third for Nippon Telegraph and Telephone Corporation (NTT)) (as previously described above in I. G.)

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 nearly JPY 500 trillion, ranked 3rd in the world. Japan's regional economies have GDPs the size of other countries such as USD 2,530 billion for the Kanto region (including Tokyo) that is comparable to U.K. (USD 2,429 billion), USD 981 billion for the Kinki region (including Osaka) that is comparable to Korea (USD 1,116 billion), and USD 930 billion for the Chubu region (including Nagoya) that is comparable to the Netherlands (USD 837 billion) in FY 2011.

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

The tertiary industry accounted for 74.3% of the total Japanese GDP in 2013, and the primary and secondary industries accounted for 1.2% and 24.5%, respectively. Among the tertiary industry, major businesses include service (19.9%), wholesale and retail (14.5%), real estate (11.8%), and government services (9.1%).

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 ten terms as a non-permanent member of the UN Security Council in the past, and will serve as a non-permanent member for the 2016–17 term. 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 15 Economic Partnership Agreements, mainly with ASEAN countries.

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 Ministry of Foreign Affairs: [http://www.mofa.go.jp/about/emb\\_cons/over/index.html](http://www.mofa.go.jp/about/emb_cons/over/index.html)

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 particular 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 475-member House of Representatives elected for four years unless dissolved by the Prime Minister, and the 242-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 295 members elected from single-seat constituencies and 180 members by proportional representation by party from 11 electoral blocs. The House of Councillors consists of 96 members elected by proportional representation by party nationwide, and 146 members from 47 multi-seat prefectural 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. 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.

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

The Liberal Democratic Party of Japan (LDP) which won the general election in December 2012 is in charge of the present government. Due to the result of the LDP's economic policy called "Abenomics" that was named after Prime Minister Abe, the present government has been stable so far.

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's judicial institutions consist of the Supreme Court; high courts, whose primary function is appellate; district courts, which are trial courts exercising general jurisdiction over all actions, criminal and civil; family courts; and summary courts.

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 1,500-2,000 trainees annually as selected through the National Bar Examination. Under the new law schools system which started in 2004, in principle, only graduates of the law schools may take 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 patent application filing date. In the pharmaceutical and agrochemical industries, the patent term can be extended by a period not exceeding five years.

## 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.** 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 20 years after the date of registration.

## Copyright

**Definition and legal requirements.** Under the Copyright Act, copyright arises automatically without registration on the production 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 right 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.** A copyright is effective at the time of creation of the work and continues for 50 years following the death of the author (for a cinematographic work, 70 years from publication).

### **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) that 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 arises on creation and generally lasts for three years.

### **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.

- 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, and the Anti-Counterfeiting Trade Agreement.

- Are there regulatory guidelines for licenses?

The Fair Trade Commission (JFTC) issued the “Guidelines for the Use of Intellectual Property under the Antimonopoly Act” in 2007. It has been amended from time to time, and the latest version is as of January 2016.

### **III. Investment Incentives**

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

The New Development Strategy adopted by the Japanese Cabinet in June 2010 aims to double the inflow of people, goods, and capital into Japan over the next decade. As a result, the Japanese Government and local governments offer certain incentives to investors. The New Development Strategy does not give examples of these incentives. However, the Act for Promotion of Japan as an Asian Business Centre and other incentives at a prefectural level were adopted in order to promote foreign investment.

The Act for Promotion of Japan as an Asian Business Centre was enacted in November 2012. The Act provides for new research and development (R&D) programs and the establishment of regional headquarters for global companies, which can create certain incentives for investors (including certain corporate tax breaks and patent fee exemptions).

The government also provides various subsidy programs, including financial support towards the initial costs of setting up new high value-added locations (R&D and regional headquarters) in Japan. Certain local governments also provide their own incentives.

### **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 (16), regional banks (64), second-tier regional banks (41), foreign banks (53), and other banks (16) (as of August 2015) 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 banking groups (Mitsubishi UFJ Financial Group, Sumitomo Mitsui Financial Group, and Mizuho Financial Group). Although regional banks have remained largely independent due to preferential regulation and, as a result, major Japanese banks’ market shares are relatively small, mergers among regional banks have been accelerated recently due to their severe market conditions. Recently, new types of banks focusing on internet banking and settlement services with low costs have appeared.

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 recently 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 170 trillion yen in assets. Its network is the most extensive of any financial institution in Japan with about 230 branches and 24,000 post offices in 2014 (the average of three major Japanese banking groups is about 634).

The Japanese equity market is the second largest in the world in terms of market cap. The key bourse is operated by the Japan Exchange Group, which launched in 2013 as a result of the merger between the Tokyo Stock Exchange and the Osaka Stock Exchange. With globalization and

deregulation, a variety of new investment products such as Equity Trust Funds (ETFs) and Real Estate Investment Trust Funds (REITs) have appeared, and derivatives in particular are attracting attention with a steady growth in the number of hedge funds. To provide equity investment for cutting-edge startup companies, Mothers market and JASDAQ market are offered.

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. As a result of deregulation and development of information technology, the role of securities firms providing their services only through the Internet has drastically increased in the retail market since the late 1990s.

## **V. Exchange Controls**

The Foreign Exchange and Foreign Trade Act (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 Bank of Japan (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](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 so-called "Catch-All Regulation". When the 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 unless included in the other 15 categories are included in this 16th category.

### **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 feature 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, and must be paid by the recipient of such imported goods.

### 5. International Conventions

Japan is a member of various international organizations or 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 15 Economic Partnership Agreements, mainly with ASEAN countries.

## VII. Structures for Doing Business

### A. Structures

#### 1. Establishment of a Subsidiary

A wholly-owned subsidiary of a foreign investor is easily created only by 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. However, from the standpoint of prestige, it is important to have a proper amount of capital. The entire amount of capital must be paid in at the time of incorporation. Attention should be drawn to the fact that certain business activities, such as banking which may be carried out by branches of foreign investors, are prohibited for subsidiaries of foreign investors.

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 (among other things).

#### 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 held companies or closely held companies subject to certain filing and notification requirements under the Antimonopoly Act and FEFTA. 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).

Hostile takeovers are generally unsuccessful because of the above-mentioned Japanese corporate culture in I. D.

## VIII. Requirements for the Establishment of a Business

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

### Registration formalities

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 administered by the Legal Affairs Bureau. The following information must be provided:

- Company name
- Location of headquarters
- 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 or shareholders 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, this is not common in Japan, as certain appraisal procedures need to be followed, requiring additional time and costs.

### **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**

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.

K.K. is required to have a minimum of one director, although in practice, many K.K.s establish a full board of directors. If a full 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 corporate auditor (*kansayaku*) or an accountant (*kaikei-san'yo*) is required. Most K.K.s appoint a corporate auditor. Both a corporate auditor and an accounting auditor (*kaikei-kansanin*) 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 choose 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.

## Competition authority

The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade ("Antimonopoly Act") and relevant regulations and guidelines enacted by the Fair Trade Commission ("JFTC") regulate restrictive agreements and practices.

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 gives the JFTC authority to take measures necessary to eliminate acts in violation of the Antimonopoly Act.

The guidelines to the 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.

If a business combination meets the safe harbor requirement, it is not considered generally to be conduct that is in violation of the Antimonopoly Act.

The Antimonopoly Act also requires a prior notification for certain business combinations. For example, for the acquisition of shares of another company, a prior notification is required if there is all of the following:

- The amount of annual sale of the purchaser group in Japan is JPY 20 billion or more;
- The amount of annual sale of the target group in Japan is JPY 5 billion or more; and
- Voting rights newly surpass 20% or 50% after the acquisition.

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

## License/Permits

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.

## 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 104 Codes of Fair Competition for various industries (including food, alcohol, commodities, household appliances, drugs and cosmetics, publication, automobiles, and real estate). 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 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.

#### 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.

### **Agency and distribution**

There are no special laws and 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 arisen yet. 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.

### **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 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**

### **Companies declared defunct**

#### A. General Consequences of Insolvency

Insolvency does not immediately result in bankruptcy or liquidation. However, the insolvent is usually forced by creditors 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 bankruptcy laws. In addition, the creditors may apply for relief under the bankruptcy laws.

## B. Minimum Debt-to-Capital Ratio Triggering Liquidation

There is no minimum debt-to-capital ratio that triggers recapitalization or liquidation. In many cases, however, foreign shareholders recapitalize in order to continue business or liquidate in order to withdraw business without dispute with local creditors and avoid special liquidation as described below in 4.

### Remedies available to a company experiencing financial difficulties

#### 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 (*Minji Saisei*) under the Civil Rehabilitation Act

Under the Civil Rehabilitation Act, if a bankruptcy event occurs, the debtor may file a petition with a court for the Civil Rehabilitation procedure, proceed with the Civil Rehabilitation procedure and prepare a Civil Rehabilitation Plan by itself under supervision of a supervisor appointed by the court. A Civil Rehabilitation Plan may be approved by a majority of the rehabilitation creditors who attend a creditor meeting where the creditors with a majority of all rehabilitation credits are present. Rehabilitation credits 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 (Law No. 172 of 1952) (*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.

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

In certain circumstances, such as the 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 special liquidation is not possible, bankruptcy procedures shall be commenced.

## XI. Labor Legislation, Relation, and Supply

What laws govern 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.
- **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.
- **Labor Contracts Act.** This regulates fundamental rules on employment contracts.

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.

### **Employment regulations**

In Japan, a written contract of employment is not required. However, on or before entering into an employment contract, an employer is required to expressly show employees the following employment conditions in writing:

- 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

In practice, many Japanese companies provide for employment conditions in their rules of employment, rather than individual employment contracts. An employer who 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.

The Labor Contracts Act and various court precedents have determined that changing rules of employment and/or changing employment conditions in a way that disadvantages employees (without obtaining consent) is generally invalid.

However, changes may be allowed in the following cases:

- The employer has informed his employees of the amended rules of employment.
- The changes are reasonable. This is determined by the need for the changes, the overall provisions of the rules of employment, and after taking into account the extent of the disadvantage incurred by the employees.

### **Hiring and firing requirements**

In Japan, many employment contracts are indefinite-term contracts (with no fixed contractual term). 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.

## 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.

## Management representation

In general, employees are not entitled to management representation or to be consulted in relation to corporate transactions, except in limited circumstances. For example, if an employer intends to transfer its business through a corporate split (namely, the corporation transfers part of its business to a newly established or existing entity) prior consultation with the employees is required. This is because the employees being transferred to another entity might not have given their consent.

In addition, where the validity of an employee's dismissal is challenged, one factor used by the court to determine whether there were objectively reasonable grounds for dismissal is whether sufficient consultation with employees and labor unions has taken place.

## XII. Tax on Corporations

### 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.

### 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.

### Main taxes

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

- **Corporation tax.** This is a national tax.
- **Corporation special 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.
- **Local corporation special tax.** This is a national tax paid to a local tax authority.

### Tax rates

Tax rates of Japanese corporations can vary due to the amount of taxable income and capital, the number of branches and employees, the location of the headquarters, and the fact that they are

periodically reviewed. However, the standard applicable rates for a small company located in Tokyo with taxable income of more than JPY 8 million and with the financial year beginning after April 1, 2015, are as follows:

- Corporation tax: 23.9%
- Corporation special tax: 1.05%
- Corporation inhabitant tax: 3.08%
- Enterprise tax: 6.7%
- Local corporation special tax: 2.89%

The effective tax rate released by the Ministry of Finance as applied to a Japanese corporation after April 1, 2015, is 32.11%.

### **Tax treaties**

Japan has 64 income tax treaties, conventions or agreements with 95 countries in December 2015.

### **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 from foreign affiliates, “excessive interest payment rules” were introduced starting with financial years beginning on or after April 1, 2013. The rules provide that if the amount of net interest paid by a Japanese company to its controlling or controlled affiliates is more than 50% of its adjusted income, the exceeding amount must not be deducted as an expense. There are some limited exceptions, as follows:

- Amount of net interest paid to controlling or controlled affiliates is JPY 10 million or less.
- Amount of net interest paid to controlling or controlled affiliates is 50% or less of the amount of the total interest paid.

### **Controlled foreign company**

The profits of a foreign subsidiary with an applicable tax rate of less than 20% are imputed to the income of its Japanese parent and taxed in Japan, unless the foreign subsidiary meets all of the following standards:

- 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 administrates, 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

### **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 (*OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2001*):

- Comparable uncontrolled price method
- Resale price method
- Cost plus method
- Transactional net margin method
- Profit split 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).

### **XIII. Tax on Individuals**

#### **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.

#### **Social security and welfare system contributions**

An employer must withhold income tax from the monthly salary of his employees and, in general, pay it to the relevant tax authority 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 will be completed by a year-end adjustment made by the employer.

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:

- Pension insurance:
  - Total premium (% of salary and bonus): 17.474%;
  - Employer contribution: 8.737%; and
  - Employee contribution: 8.737%.
- Health insurance:
  - Total premium (% of salary and bonus): 9.97% (Tokyo);
  - Employer contribution: 4.985%; and
  - Employee contribution: 4.985%.

- Nursing care insurance:
  - Total premium (% of salary and bonus): 1.72%;
  - Employer contribution: 0.86%; and
  - Employee contribution: 0.86%.
- Employment insurance:
  - Total premium (% of salary and bonus): 1.35%;
  - Employer contribution: 0.85%; and
  - Employee contribution: 0.5%.
- Workers accident compensation insurance:
  - Total premium (% of salary and bonus): from 0.25% to 8.9%;
  - Employer contribution: all (from 0.25% to 8.9%); and
  - Employee contribution: none.
- Contributions to child allowance:
  - Total premium (% of salary and bonus): 0.15%;
  - Employer contribution: all (0.15%); and
  - Employee contribution: none.

The premiums are correct as of February 1, 2015, and rates are reviewed periodically. However, different premiums are applicable for certain specific industries. For example, for workers accident compensation insurance, premiums are set depending on the employer's business and according to the relative risk of accidents.

## **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.

### **Tax on income**

Income tax is a national tax and the competent authority is the National Tax Agency. In 2015, 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, if the amount of gross salary is as follows:

- JPY 1,800,000 or less: 40% of gross salary (JPY 650,000 at minimum)
- More than JPY 1,800,000 and JPY 3,600,000 or less: 30% of gross salary plus JPY 180,000
- More than JPY 3,600,000 and JPY 6,600,000 or less: 20% of gross salary plus JPY 540,000
- More than JPY 6,600,000 and JPY 10,000,000 or less: 10% of gross salary plus JPY 1,200,000

- More than JPY 10,000,000 and JPY 15,000,000 or less: 5% of gross salary plus JPY 1,700,000
- More than JPY 15,000,000: JPY 2,450,000

Other deductions are also made from the employee's gross salary, including social security contributions.

This is a local tax and the competent authority is the governor of the local government. Individual inhabitant tax is imposed by local government when an employee registers as an inhabitant on January 1 of each year. In 2015, the standard tax rate for individual inhabitant tax in Tokyo is not progressive at 10%. However, the rates for this tax vary between regions. In 2015, the standard tax rates of individual inhabitant tax in Tokyo are as follows:

- Prefectural inhabitant tax: 4%
- Municipal inhabitant tax: 6%

In addition, a fixed amount of individual inhabitant tax is also imposed. The amount in Tokyo is set at JPY 5,000 for each individual (JPY 1,500 for prefectural inhabitant tax and JPY 3,500 for municipal inhabitant tax) until 2023.

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.

#### **XIV. Other Taxes**

**Taxes on Property.** Taxes on property include municipal fixed-assets 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 8% (6.3% of national tax and 1.7% of municipal tax), which is proposed to be increased to 10% from April 2017.

**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), the point-based system is introduced. Under the point system, foreign nationals who have satisfied certain requirements shall receive preferential treatment such as preferential processing of immigration procedures, permission for accompanying their parents, etc. according to the amount of points they earned.

## **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. Permanent Arbitral Bodies**

Among various arbitral bodies in Japan, the Japan Shipping Exchange, the Japan Commercial Arbitration Association and the National Committee of the International Chamber of Commerce handle international transactions. The Japan Intellectual Property Arbitration Center handles arbitration on disputes involving intellectual property and also handles dispute resolution procedures for “.jp” domain names.

The Japan Shipping Exchange was established in 1933 and solely handles maritime disputes. The Japan Commercial Arbitration Association was formed in 1950 and has concluded inter-institutional agreements with other permanent arbitral bodies of various countries, in order to facilitate international commercial arbitration. Each permanent arbitral body 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 Book VIII of the Law on Notification by Public Notices and Arbitration Procedures. However, these provisions (which had remained unchanged since 1890) were abrogated and entirely replaced by the general arbitration procedures relating to civil and commercial matters currently set out in the Arbitration Act (Law No. 138 of 2003), which is modeled on the UNCITRAL Model Law on International Commercial Arbitration. 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 arbitrators shall hear the parties. 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 for such reasons based on the Model Law. The period for seeking nullification is three months from the date of service of the award.

#### 4. International Commercial Arbitration

The current rules do not have any specific provisions with respect to international commercial arbitration, but they are interpreted to be applicable to international commercial arbitration as well as to domestic arbitration. While the new Law also 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.

Japan was also a party to the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention of the Execution of Foreign Arbitral Awards of 1927.

### 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 the following exceptional cases are tried and decided by the grand bench consisting of all the justices:

- (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 last resort 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 1,400,000 yen 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 the jury and assessor do not exist in Japan, although a system of citizen participation (*saiban-in*) in certain criminal trials has been introduced.

#### 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 is usually examined.

The grounds for a second appeal, *jokoku* appeal, in civil cases are an error in the interpretation of or other violation of the Constitution, and an error in law that clearly affects the outcome of the litigation. A *jokoku* appeal may be made within two weeks after the judgment of the second instance court is handed down. 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 will 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 will have exclusive jurisdiction in the second instance. Further, the Tokyo and Osaka District Courts will 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. Effective as of April 2015, the Antimonopoly Act was revised so that any objection to the 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/](http://www.keidanren.or.jp/)

**Main activities.** *Keidanren* is a comprehensive economic organisation with a membership comprised of 1,329 representative companies of Japan, 109 nationwide industrial associations and 47 regional economic organisations (as of June 2015). Its mission is to draw upon the vitality of corporations, individuals and local communities to support corporate activities which contribute to the development of the Japanese economy.

### **Japan External Trade Organisation (JETRO)**

**W** [www.jetro.go.jp](http://www.jetro.go.jp)

**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/](http://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](http://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](http://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](http://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/](http://www.jpo.go.jp/)

**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](http://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](http://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/](http://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](http://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](http://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**

**W** [www.mof.go.jp/tax\\_policy/summary/corporation/084.htm](http://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](http://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**

**W** [www.mof.go.jp/english/customs\\_tariff/index.html](http://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](http://www.jftc.go.jp/en/policy_enforcement/index.html)

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

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