Japan

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REGULATORY FRAMEWORK

1. Please briefly set out the key environmental legislation and regulatory authorities in your jurisdiction.

The Ministry of the Environment has a major role in environmental administration and has exclusive jurisdiction over matters involving waste, environmental pollution, natural conservation and wildlife protection. It has joint jurisdiction with other ministries over:

- Global warming.
- Preservation of the ozone layer.
- Recycling.
- Control of chemical materials.
- Contamination of seawater.
- Protection of forests, green space, rivers and lakes.

Under many environmental laws, governors of prefectures are given authority to issue permits and accept applications and notifications. This authority is often delegated to governors of municipalities (cities, towns or villages). Local governments (prefectures and municipalities) can also establish their own regulations.

Certain laws give local governments authority to establish their own local ordinances regarding environmental matters for which they are responsible. Even without such express legal authorisation, local governments can establish local ordinances that are stricter or broader than the regulations under national laws, as long as such ordinances are consistent with related laws.

2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

Generally, if a substantial violation is known to the relevant regulator, the violation is rectified by the guidance or order of the regulator.

However, given the number of cases of illegal dumping, this matter is still a serious social issue. According to the 2008 White Paper on the Environment, there were around 170,000 tons or 500 cases of illegal dumping of industrial waste in 2007.

Measures such as tighter penalties, establishing and strengthening a manifest system (*see Question 10*) and joint patrols between the Regional Environment Offices (local offices of the Ministry of the Environment) and relevant local governments are being taken, but the results have not been particularly positive.

In addition, there are many violations of the regulations under the Building Standards Law regarding floor area ratio and building coverage ratio, which are important regulations for creating a desirable urban environment. The regulator is reluctant to take action to enforce these regulations, because of the large number of violations.

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

Environmental NGOs in Japan are not especially active. It has traditionally been seen as the role of government to promote the public interest. In addition, only governments can prosecute violations of environmental laws; private persons, including environmental NGOs, cannot file lawsuits seeking correction of such breaches unless their own rights have been infringed. This is also why the powers of environmental NGOs are weak.

However, non-profit corporate reform has occurred recently to stimulate public interest activities by the private sector. The reform will make the incorporation of non-profit companies easier. In addition, measures to further increase donations to non-profit corporations through reform of the taxation system are being discussed.

EMISSIONS

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

In Japan, there are several statutes that govern emissions. There is no integrated regime that governs all kinds of emissions. Many environmental regulations prohibit emissions exceeding certain standards, and require emitters to comply with such standards.

5. If there is an integrated permitting regime, please provide a brief overview of it, in particular:

- **What permits are needed and which regulator issues them?**
- **How long do permits last?**
- **Are there restrictions on transferring permits?**
- **What are the penalties for non-compliance?**

There is no integrated regime that governs all kinds of emissions.

6. Please summarise the regulatory regime for water pollution (whether part of an integrated regime or separate). In particular:

- **What permits or other authorisations are required and which regulator issues them?**
- **Are any activities prohibited (such as causing or failing to prevent water pollution)?**
- **Can the regulator require a polluter to clean-up or pay compensation for water pollution?**
- **What are the penalties for non-compliance?**

The primary law regarding water quality control is the Water Pollution Control Law. This law regulates the emission of wastewater from factories and business establishments to public water areas (for example, rivers, lakes and marshes, gulfs, coastal areas and waterways) and penetration into groundwater.

If a specific facility is going to be installed that will emit substances with a likelihood of causing harm to human health, notification to the governor of the relevant prefecture is required. The governor can order changes or abolition of the submitted plan if the drains of a specified facility do not comply with effluent water standards. Breach of such an order may result in imprisonment or fines.

Compliance with effluent water standards is required for facilities after installation. Specifically, certain substances affecting human health and preservation of the living environment are subject to emission concentration standards. In addition, in areas where many pollution sources exist such as Tokyo Bay, emission standards by total volume have also been set. Additional standards can also be implemented through local ordinances.

If there is emission of effluent water exceeding the effluent standards from the drains of a specific facility, imprisonment or fines can be imposed without the issue of an administrative order. If there is violation of total volume standards or penetration into groundwater, orders for rectification are issued initially, and penalties can be imposed if there is failure to comply with such orders.

If there is groundwater penetration of certain substances categorised as hazardous substances, the governor of the prefecture can require and order the polluter to carry out purification measures. If the polluter fails to comply, that polluter is subject to imprisonment or fines. In addition, if a person becomes ill or dies due to exposure to hazardous substances specified by the Water Pollution Control Law, the violator becomes liable for such damages, irrespective of whether that violator was negligent.

7. Please summarise the regulatory regime for air pollution (whether part of an integrated regime or separate). In particular:

- **What permits or other authorisations are required and which regulator issues them?**
- **Are any activities prohibited (such as discharging certain substances into the air without a permit or causing air pollution)?**
- **Can the regulator require the polluter to clean-up or pay compensation for air pollution?**
- **What are the penalties for non-compliance?**

The Air Pollution Control Law is the main law on air pollution. There are special regulations for automobiles (*see below, Automobiles*).

Air Pollution Control Law

This law regulates soot and smoke, particulates and VOCs (volatile organic compounds). Installation of a facility emitting soot and smoke requires prior notification to the governor of the prefecture. Governors of prefectures can order changes or abolition of the submitted plans if they deem it necessary. Certain concentration standards have been determined for specific substances, and emissions of these substances from facilities cannot exceed such standards. In an area with substantial pollution, aggregate volume standards for sulphur oxide and nitrogen oxide can be set, and the aggregate volume per factory unit can be set by plans prepared by the governor of the prefecture.

Penalties can be directly imposed for non-compliance with emission standards. Governors of prefectures can also issue a rectification order or a temporary suspension order of the use of facilities. Anyone who breaches these orders is subject to imprisonment or fines.

If a person becomes ill or dies due to exposure to hazardous substances stipulated by the Air Pollution Control Law, the violator becomes liable for this, regardless of whether that violator was negligent.

Automobiles

Certain automobiles (such as trucks, buses and diesel automobiles) used in specified areas that do not meet emission standards for nitrogen oxide and particulate matter will not pass automobile inspections, and will not be permitted to be operated in such areas (*Law Concerning Special Measures for Total Emission Reduction of Nitrogen Oxides and Particulate Matters +for Automobiles*). In addition, certain large enterprises must prepare an automobile use management plan and submit an annual report on implementation of measures to reduce emissions.

Governors of prefectures can issue recommendations if the reduction of emissions is considerably less than the relevant standards. If the emitter does not follow such recommendations,

the governor can make this fact public, or issue an order for the emitter to take certain measures. Anyone who does not follow such orders is subject to fines.

The recent "Tokyo air pollution suit" involved more than 600 asthma and other patients claiming damages against seven automobile manufacturers, in addition to the national government, the Tokyo Metropolitan Government, and the Metropolitan Expressway Co, for injuries caused by car exhaust fumes. The matter settled under the auspices of the Tokyo High Court on 8 August 2007.

Under the settlement, the seven automobile manufacturers, as well as the other defendants, agreed to bear some of the patients' medical expenses. According to an official announcement by the Tokyo Metropolitan Government, the seven automobile manufacturers have agreed to bear JPY3.3 billion (about US$31.3 million) of a JPY20 billion (about US$189.6 million) plan to subsidise the medical expenses of all asthma patients in Tokyo for five years, in addition to the JPY1.2 billion (about US$11.4 million) that was paid in the settlement.

CLIMATE CHANGE

8. Please provide a brief overview of emissions trading schemes in your jurisdiction, including any national targets and carbon allowances systems. Is your jurisdiction party to international agreements on this issue and how have they been implemented into your national law?

Japan is party to the Kyoto Protocol 1997. Japan's emissions trading scheme started in 2005 as its Voluntary Emissions Trading Scheme.

Parties who can participate in the system are:

- Target-holding participants, which receive subsidies for the cost of facilities that reduce carbon dioxide emissions and an emissions allowance, in return for committing to a certain amount of emissions reduction.
- Transaction participants, who conduct transactions in emission allowances and establish accounts at the Ministry of the Environment's Voluntary Emissions Trading Scheme registry. They do not receive subsidies or an emissions allowance. Emissions allowance trading using the registry became possible from April 2007.

A target-holding participant receives an emissions allowance in the amount of the average of its emissions for the past three years, less the reduction target amount. A target-holding participant must return the emissions allowance equal to its actual emissions for the relevant year to the Ministry of the Environment. If it cannot do this, the participant must return the subsidies corresponding to the amount of emissions that it failed to reduce, as a penalty. It is possible to return the required allowance by buying an emissions allowance from other participants, and so avoid the penalty.

It seems that Japan will adopt emissions trading schemes as the main means of fulfilling its obligations under the Kyoto Protocol (*see Question 28*).

ENVIRONMENTAL IMPACT ASSESSMENTS

9. Please provide a brief overview of the requirements to carry out environmental impact assessments (EIAs) for certain projects (for example, construction of an oil and gas facility). In particular:

- **What type of projects and impacts are covered?**
- **Are permits or other documents required before the project can start and which regulator issues them?**
- **What are the penalties for non-compliance?**

EIAs are required by the EIA Law. There are also local ordinances established by certain local governments that require assessments. Local ordinances may be stricter than the EIA Law, as they may, for instance, include more types of target projects, as well as small-scale projects that are outside the scope of the EIA Law and required procedures for public hearings and subsequent monitoring.

Screening

There are 13 types of projects that are subject to EIAs under the EIA Law. These are projects such as:

- Roads.
- Dams.
- Railways.
- Airports.
- Power plants.
- Landfill sites for industrial waste.
- Reclamation.
- Land readjustment projects.

These projects are limited to those conducted by the government or those for which permissions are granted by the government. Of these, large-scale projects that may greatly influence the environment are classified as Class-1 Projects, and are always subject to assessment. Smaller scale projects are classified as Class-2 Projects, and the competent ministers individually determine whether to assess such projects.

Scope of an EIA

Once the target project is determined by screening, a document to determine the scope of the EIA is prepared. At this stage, the actual method of implementation is determined. The items to be evaluated are selected by business enterprises responsible for the target project, taking into consideration the opinions of the public and governors of local governments.

EIA implementation

Business enterprises then compile the results of their evaluation in draft environmental impact statements, and make these statements available to the public. During this period, explanatory meetings for local residents are held. Alternate proposals, if any, are examined at this stage. Business enterprises then prepare final environmental impact statements after examining the opinions of the public and governors of local governments.

Final environmental impact statements are then sent to and examined by the Minister of the Environment and the competent ministers with authority to grant permission for the project. The statements are then confirmed and made public. The project cannot start until final environmental impact statements are made public.

The competent ministers examine the statements in light of the environmental impact, and determine whether to grant permission for the project. Because of this, business enterprises should not ignore various opinions given about their draft environmental impact statements when they are preparing their final environmental impact statements.

Penalties

As the EIA is a procedural law, there are no penalties such as fines for non-compliance. However, companies cannot obtain approval for their projects if they fail the assessment process.

WASTE

10. Please provide a brief overview of the regulatory regime for waste. In particular:

- **What permits or other authorisations are required and which regulator issues them?**
- **What activities are prohibited (such as storing or disposing of waste without a permit)?**
- **Do operators need to meet certain criteria (such as having sufficient financial means to operate landfills and other waste disposal sites)?**
- **Are there special rules for certain types of waste (such as hazardous waste or electrical equipment)?**
- **What are the penalties for non-compliance?**

The Waste Disposal and Public Cleansing Law (Waste Law) is the main law regarding waste. General waste and industrial waste are treated differently under this Law.

Concepts of waste

Waste is defined as filth or undesirable objects in solid or liquid form such as garbage, bulky refuse and combustion residue. Whether it is an undesirable object is determined by comprehensive consideration of the intention of the occupant, and the characteristics of the object. Because this decision is not necessarily easy, there may be disputes over it.

General waste disposal

General waste means waste other than industrial waste. Disposal of general waste is conducted by municipalities as an administrative service. Municipalities can dispose of general waste on their own or can engage contractors. The engagement and disposal standards with which municipalities and general waste disposal contractors must comply are regulated.

Disposal contractors of general waste must obtain a licence from the governors of municipalities. To obtain a licence, the applicant must show that it has proper facilities and is able to continuously perform its obligations under the licence. There are certain disqualifications. Disposals in violation of the law can result in orders for suspension of business, or revocation of the licence in the case of severe breaches.

Installation of general waste disposal facilities requires the permission of governors of prefectures. To obtain permission, simple assessment procedures regarding the living environment must be conducted, and living environment impact survey reports setting out the results submitted.

Industrial waste disposal

Industrial waste is waste created in connection with business activities. The types of waste considered industrial waste are set out in the Waste Law. In principle, industrial waste must be disposed of by the business enterprise discharging that waste. However, it is common for such businesses to pay others to dispose of their waste. The Waste Law regulates disposal, storage and engagement standards.

An industrial waste disposal contractor must obtain a licence from the governors of prefectures. The licence standards for industrial waste disposal contractors are becoming stricter. In addition, to encourage able contractors, an evaluation system for determining excellence of industrial waste disposal contractors was established in 2005. Certain incentives, such as simplification of certain procedures, have been given to contractors rated as excellent, and it has become possible for waste discharging enterprises to select such contractors.

Installation of industrial waste disposal facilities requires the permission of the governors of prefectures. As with the installation of general waste disposal facilities, to obtain permission, simple assessment procedures regarding the living environment must be conducted, and living environment impact survey reports setting out the results submitted.

To prevent illegal dumping, a manifest-check system exists. Business enterprises discharging industrial waste must deliver a management ticket (manifest) describing the type, volume and so on of their waste, on engagement of delivery or disposal of it. The manifest must move between the contractors with the movement of the waste. On final, appropriate disposal of the waste, a document acknowledging that disposal must be sent to the waste discharging enterprises. By using this system, business enterprises can track and confirm whether there has been appropriate disposal of the waste.

Special management waste

This is waste designated as having a likelihood of explosion, toxicity, infection or causing other damage to the health or the living environment of humans.

Strict disposal and storage standards are imposed on special management waste.

A special management industrial waste disposal contractor must also obtain a licence for its activities, which is separate to the business licence for the disposal of industrial waste.

Penalties

The following are punishable by imprisonment of up to five years and/or fines up to JPY10 million (about US$94,817):

- Operating without a licence.
- Installing waste disposal facilities without permission.
- Violating orders, for example to suspend business.
- Violating orders to take certain measures.
- Illegal dumping.
- Illegal incineration.

Reports and onsite inspections

Governors of local governments or the Minister of the Environment can require a person who conducts or seems to conduct waste disposal to prepare a report on matters deemed necessary.

Governors of local governments can conduct onsite inspections of business establishments or the disposal facilities of persons who dispose of waste or of any material that may become waste.

Restoration to original state

With respect to general waste, governors of municipalities can order persons who conducted a disposal, or who entered into an engagement not in compliance with the engagement standards, to undertake restoration measures.

With respect to industrial waste, governors of prefectures can issue restoration orders to any of the following:

- Persons who make inappropriate disposal.
- Persons who entrust waste not in compliance with the engagement standards.
- Persons who violate the manifest system.
- Persons who make demands for, or who abet the three activities listed above.
- Business enterprises discharging industrial waste, if the persons who make inappropriate disposal do not have adequate funds, and such enterprises:
  - did not pay the appropriate fees to such persons; or
  - knew or could have known about the inappropriate disposals.

If persons who made illegal disposals are unknown or do not have adequate funds, governors of local governments can take restoration measures instead.

ASBESTOS

11. Please provide a brief overview of the regulatory regime for asbestos in buildings. In particular:

- **What activities are prohibited?**
- **What are the main obligations (such as investigating the presence of asbestos and risk assessments for employees) and who is liable to carry them out?**
- **What permits or other authorisations are required and which regulator issues them?**
- **What are the penalties for non-compliance?**

Asbestos cannot be used in buildings. The owner of a building that contains asbestos, which was used in the period during which its use was allowed, can keep the building as it is, but must take necessary steps to prevent the spread of asbestos fibres. In particular, if a building contains sprayed asbestos that may blow around in the building, and the owner has employees in the building, failure to take appropriate preventative measures is punishable by imprisonment up to six months or a fine up to JPY500,000 (about US$4,741).

A contractor that demolishes or crushes a building must:

- Check whether the building has asbestos.
- Prepare a work plan to prevent damage to the health of labourers caused by asbestos if the building has asbestos.
- Notify the relevant authority of the construction work in advance.

A person who fails to do this is subject to imprisonment or a fine.

A landlord must keep his building in good repair (*Civil Code*). If asbestos blows around in the building, this is a condition that must be repaired. As a result, the landlord must take appropriate measures to prevent asbestos from being blown around the building. Failure to do this amounts to default under the lease by the landlord.

In addition, if the building is used by third parties, such as hotel guests, the occupier or owner of the building is liable for damage incurred by those third parties due to any defect of the building, which includes asbestos blowing around in the building (*Civil Code*).

CONTAMINATED LAND

12. Please provide a brief overview of the regulatory regime for contaminated land. In particular:

- **Which regulator is responsible and which legislation applies?**
- **In what circumstances can a regulator require the investigation and clean-up of contaminated land?**
- **What are the penalties for non-compliance?**

The governor of each prefecture is responsible under the Soil Contamination Countermeasures Law (SCCL), which is the national law concerning contaminated land. The municipalities and prefectures can also regulate soil contamination by establishing their own local ordinances.

A landowner, a land manager or a land occupier (collectively, a landowner) of land with a factory where specific hazardous materials have been manufactured, used or disposed of, must investigate the land when the factory ceases operations (*SCCL*). A landowner must also investigate the land if the competent regulator deems that there is a risk of contamination that may harm human health, and orders an investigation by the landowner (*SCCL*).

If the land is found (in mandatory investigations conducted under the SCCL) to be contaminated to an extent regulated by the SCCL, the land is made a designated area. The regulator can order the landowner of the designated land to clean up the contamination. However, if the polluter is clearly different from the landowner, and the regulator deems it appropriate, the order is imposed on the polluter.

If an obligation under the SCCL to investigate soil contamination or to clean up soil contamination is not performed, the landowner or polluter is subject to imprisonment of up to one year, or a fine up to JPY1 million (about US$9,482).

13. In relation to liability for contaminated land:

- **Which party is liable for carrying out or paying for environmental investigation and clean-up?**
- **Can an owner or occupier who has not caused contamination be liable for investigation and clean-up of contamination on their land?**
- **Can previous owners or occupiers be liable for contamination they have caused in the past?**
- **Are there limits on liability or ways for a party to limit its liability?**

The landowner can be liable under the SCCL for carrying out or paying for environmental investigation and clean-up, except where a polluter other than the landowner is ordered to clean up the contamination (*see Question 12*).

If the land is contaminated by dioxin, the soil contamination is cleaned up by the governor of the prefecture and the polluter pays the costs of doing this. Dioxin is regulated by a special statute.

An owner or occupier who has not caused contamination can be liable for the investigation and clean-up of contamination (*SCCL*). A previous owner or occupier cannot be liable for contamination unless he caused contamination in the past. There are no limits on liability or ways for a party to limit its liability, if the liability derives from the SCCL.

A buyer often requires a seller to check the level of soil contamination at the time of sale (*see Question 20*). As a result, in most cases where contaminated land is investigated and cleaned up, that investigation or clean-up is voluntary, rather than performed as an obligation under the SCCL.

14. Can a lender incur liability for contaminated land and is it common for a lender to incur such liability? What steps do lenders commonly take to minimise such liability?

It is not common for a lender to incur liability for contaminated land. In theory, a lender can be liable if it is deemed to be a landowner under the SCCL (*see Question 12*), although there are no judicial precedents on this issue.

If, for example, an owner of land transfers the land to a lender as security for a loan, the lender becomes a landowner. In addition, if the lender controls the use of the land, the lender may become a landowner because it may be deemed a manager of the land.

Lenders do not seem to take any special steps to minimise such liability, mainly because such liability is deemed secondary, while the operators in these cases have primary liability.

15. Can a private individual bring legal action against a polluter, owner or occupier (for example, for damage caused by the movement of contamination onto his land)?

A private individual can take legal action against a polluter for damage caused by the movement of contamination on to his land under the law of tort, but cannot take legal action against an owner or occupier who has not caused such damage.

TRANSACTIONS

16. In what circumstances can a buyer inherit pre-acquisition environmental liability in:

- **An asset sale?**
- **The sale of a company (share sale)?**

Asset sale

Because a buyer becomes the landowner, the buyer is subject to the liability of a landowner under the SCCL (*see Question 12*). The buyer does not inherit the environmental liability of a polluter under tort law.

Share sale

The landowner (the target company) does not change after the sale of shares of a company, and the buyer of the shares assumes the position that the seller had as shareholder of the target company, including any environmental liability.

17. In what circumstances can a seller retain environmental liability after disposal in:

- **An asset sale?**
- **A share sale?**

Asset sale

Because a seller loses its interest in the land after the sale, the seller ceases to be liable as a landowner after the sale under the SCCL. However, the seller can still be liable for any contamination it caused before the sale (*see Question 12*). In addition, if the seller transfers its contaminated land to a buyer controlled by the seller (to avoid liability under the SCCL) and the buyer is not able to cover the liability, the seller may still be liable as a landowner under the SCCL.

Share sale

Because the seller of shares in the company loses its interest in the shares after the sale, the seller is separated from any liability of the target company after the sale. However, the seller cannot be relieved from liability under tort law after the sale if the seller committed a tort through the target company that causes the contamination. This situation may arise where the seller controls the operation of the target company.

18. Does a seller have to disclose environmental information to the buyer in:

- **An asset sale?**
- **A share sale?**

Asset sale

Except where local ordinances specifically provide (for example, an ordinance of Kanagawa prefecture requires a seller that is a business using particular toxic substances to disclose their use), a seller of contaminated land is not obliged to disclose environmental information but is subject to hidden defect liability under the contract law theory of the Civil Code (*see Question 20*).

It is possible for the seller and the buyer to agree to exempt the seller from such liability. However, if the seller is aware of the contamination at the time of the sale, such an agreement is null and void. In addition, if the seller is a person who engages in the business of real estate transactions and the buyer is not such a person, such an agreement is also null and void (*see also Question 21*).

Share sale

A seller of the shares in a company that owns contaminated land is not obliged to disclose environmental information but may be subject to hidden defect liability against the buyer under the contract law theory of the Civil Code, if the environmental information affects the sale price of the shares. It is possible for the seller and the buyer to agree to exempt the seller from such liability. However, if the seller is aware of the contamination at the time of sale, such an agreement is null and void.

19. Is environmental due diligence common in an asset sale or a share sale? If yes:

- **What areas are usually covered?**
- **What types of environmental assessments are available?**
- **Are environmental consultants usually used? If so, what issues should be covered in an engagement letter (for example, limit on consultant's liability)?**

Areas covered

Environmental due diligence is common in both an asset sale and a share sale. If land is included in the transaction, soil contamination and asbestos are covered in the due diligence. If the company is a manufacturing company, its conduct as a manufacturer is comprehensively covered.

Types of assessment

Assessment by an environmental consultant is available for soil contamination and asbestos issues. A buyer of the shares in a company usually reviews environmental reports prepared by the company, including reports under the requirements of the international environmental management systems standard, ISO 14001.

Environmental consultants

Environmental consultants are usually retained by the seller to investigate soil contamination and asbestos issues. In this case, consultants tend to limit their liability to the seller.

The buyer usually hires environmental consultants if it wishes to obtain a report that it will rely on. Such a report only usually covers soil contamination or asbestos. For other issues, the buyer usually interviews the persons in charge of environmental issues at the company.

20. When are environmental warranties and indemnities usually given and what issues do they usually cover in:

- **An asset sale?**
- **A share sale?**

Asset sale

Under the contract law theory of the Civil Code, a seller is liable for hidden defects in the object being sold (for example, land) to the buyer. As a result, a buyer is usually not too concerned about the terms and conditions of general environmental issues.

However, buyers of land are very concerned about the specific issues of:

- Soil contamination, due to the SCCL (*see Question 12*).
- Asbestos, particularly since the regulations became stricter in 2005 (*see Question 11*).

As a result, it is now common for the seller of land or a building to be required by the buyer to give warranties and indemnities concerning soil contamination and asbestos.

Share sale

In the sale of shares in a large company, the buyer usually requires the seller to give warranties and indemnities about environmental matters generally, and particularly that the company does not violate any environmental laws and has no disputes regarding environmental issues.

21. Are there usually limits on environmental warranties and indemnities, for example, time limits or financial caps?

There are usually time limits on environmental warranties and indemnities. However, under the Real Estate Transaction Business Law, a person who engages in real estate transactions cannot set time limits of less than two years after delivery of the real estate for liability for hidden defects derived from the contract law theory of the Civil Code.

REPORTING AND AUDITING

22. Do regulators keep public registers of environmental information (for example, of environmental permits or contaminated properties)? What is the procedure for a third party to search those registers?

Making designated areas public

The governors of prefectures publicise contaminated areas found in mandatory investigations under the SCCL as designated areas (*see Question 12*). They also prepare and make available for inspection information ledgers on designated areas.

However, the number of incidents of soil contamination found in the course of voluntary investigations is much larger than the number found in mandatory investigations under the SCCL because mandatory investigations are undertaken only in limited circumstances. Soil contamination found in voluntary investigations does not have to be reported to local governments, and so is not available to the public, except when some local governments set out the obligation to report in ordinances. Some companies conduct voluntary disclosure of soil contamination discovered during voluntary investigation, for corporate social responsibility purposes.

Chemical substance management

Business enterprises must monitor and notify the government of (*Pollutant Release and Transfer Registers Law*):

- The volume of their emissions into the environment.
- The movement of chemical substances outside their business establishments.

The government calculates the total of notified data for each substance by type of business and by area, and publishes this. If a person requests data on an individual business establishment, this must also be disclosed.

Substances that may affect human health or animal and plant life (or that easily form such substances by chemical change), and substances that damage the ozone layer, must be reported. Business enterprises handling designated substances of a certain scale are subject to these obligations (*Pollutant Release and Transfer Registers Law*).

Business enterprises handling designated substances must, when transferring such designated substances, provide information on the condition and handling of the chemical substances in writing to the other party (*delivery of MSDS (Material Safety Data Sheet)*).

Disclosure of information by governments

Generally, anyone can request publication of information held by governments, under laws or local ordinances on information disclosure. Environmental information can sometimes not be disclosed if, for example, it is likely to damage the competitive position of a company. However, such information must always be made available to the public if this is necessary for the public interest.

23. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Companies are not required to conduct environmental auditing or submit environmental reports. Such audits and reports are currently only done voluntarily. However, in recent years, there is a tendency for large companies to prepare environmental reports and make them public, to show their concern for the environment. Environmental reports are sometimes included in companies' corporate social responsibility reports.

The Ministry of the Environment provides guidelines for environmental reports and lists the following to be set out in them:

- Basic matters (for example, the business of the company).
- Management policies on environmental preservation.
- Environmental management (for example, environmental management systems, research and development for the environmentally adopted design of products and services, and public interest activities on the environment).
- Activities to reduce environmental impact.

Environmental information may also be disclosed by companies in their:

- Business reports, prepared at the end of each business year under the Companies Act.

- Securities reports (in the material matters section about the business) made under the Financial Instruments and Exchange Law, which requires the continuous disclosure of corporate information by issuers of listed securities.

24. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

If there is an environmental incident at a company's facilities, the person who operates the facilities must take emergency measures and notify the governor of the prefecture of the incident (under various legislation, including the Air Pollution Control Law, the Water Pollution Control Law, and the Waste Disposal and Public Cleansing Law).

25. What powers do environmental regulators have to access a company's documents, inspect sites, interview employees and so on?

Environmental regulators have no general investigative authority but they can, under various individual laws, require companies to report and/or submit materials on certain matters, and can conduct onsite inspections of the company.

INSURANCE

26. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it usually obtained in practice?

In recent years, insurance has become available for:

- Damage arising out of incidents such as air pollution, groundwater pollution and soil contamination.
- Damages arising out of environmental pollution due to contracted works with environmental risks, such as soil contamination purification work.
- Purification costs incurred by landowners due to administrative orders under certain laws and regulations such as the SCCL.
- Personal and non-personal damage, such as personal injury to neighbouring residents due to soil contamination and groundwater pollution.

These kinds of environmental insurance are not commonly obtained because the insurance available is limited, and the premiums are expensive.

THE REGULATORY AUTHORITY

Ministry of the Environment

Main responsibilities. The Ministry of the Environment has a major role in environmental administration and has exclusive jurisdiction over matters involving waste, environmental pollution, natural conservation and wildlife protection. It also has joint jurisdiction with other ministries over other environmental issues.

W *www.env.go.jp/en/*

TAX

27. What are the main environmental taxes in your jurisdiction (for example, tax on waste disposal, carbon tax and tax breaks for carrying out clean-up of contaminated land)? For each tax, please briefly state how it is calculated, who pays it and the tax rates.

In Japan, environmental policy using taxes is still developing, and the introduction of environmental taxes, especially a carbon tax, is being debated.

There are some local governments that impose environmental taxes in relation to the following.

- **Forest preservation tax.** Some prefectures (for example, Tottori, Ehime, and Kochi) collect forest preservation taxes, which they tack onto prefecture tax by the enactment of an ordinance. Such taxes are imposed on the basis that all inhabitants of the prefecture benefit from the forest, and that tax revenues are allotted for the maintenance and preservation of forests.
- **Industrial waste tax.** This has been introduced in many prefectures. It aims to reduce the volume of industrial waste disposed of at final disposal sites, and prevent inflows of industrial waste from other prefectures, by charging tax based on the volume of the industrial waste disposed of at the sites.

REFORM

28. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

As the first commitment period of the Kyoto Protocol started in 2008 and the G8 Hokkaido Toyako Summit was held in Japan in July 2008 (with a predominant theme of the environment and climate change), the further acceleration of the reduction in carbon dioxide emissions is the main environmental issue in Japan at the moment.

Prompted by the G8 Hokkaido Toyako Summit, in March 2008 the national government established an advisory panel on global warming, composed of well-informed individuals. One of the matters they are looking at is the practical implementation of emissions trading schemes in Japan.

In June 2008, the Prime Minister announced that a trial of emissions trading schemes would take place later in the year. The Ministry of the Environment, and the Ministry of Economy, Trade and Industry have each published possible alternatives on how emissions trading schemes should be run.

The Tokyo Metropolitan Government enacted an ordinance in June 2008 to introduce:

- Reduction obligations for large-scale businesses discharging carbon dioxide.
- Emission trading schemes.

It is aiming to implement these measures from 2010.

The introduction of an environmental tax (carbon tax) is currently being examined. A specific November 2004 proposal to include targets for all fossil fuels and electricity was postponed due to strong resistance from industry.

Promotion of 3R (that is, the reduce, reuse and recycle principle) is considered an important measure for reducing waste. From 1 April 2007, businesses that use large quantities of containers and packaging must implement reduction programmes including:

- Setting goals to rationalise the usage of their containers and packages.
- Imposing a fee for their containers and packages.
- Distributing eco-bags instead of using plastic bags.

In addition, businesses that use more than 50 tons of such packaging must now report on their activities to the government.

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