

LexisNexis® Company, Foreign Investment and M&A Law Guide 2022

The first annual complimentary guide to understanding company, foreign investment and M&A practices around the world with an Asia-Pacific focus



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Company, Foreign Investment and M&A Law Guide 2022

This is the first annual complimentary guide combining the fourth Company and Foreign Investment Law Guide and the eighth M&A Law Guide.

Jurisdictional Q&As

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Jurisdiction: JAPAN

Firm: **Nishimura & Asahi**

Authors: **Katsuyuki Yamaguchi, Stephen D. Bohrer, Yusuke Urano**

**NISHIMURA
& ASAHI**

1. What is the general situation for foreign companies in your jurisdiction (for example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction)?

Japan is the third largest economy in the world, and a welcoming and easy-to-do business country for foreign investors, offering a vast array of investment opportunities. Doing business in Japan offers access to a large and broad-based market with approximately 120 million sophisticated and affluent consumers, along with numerous export opportunities, in light of the 21 economic partnership and free trade agreements to which Japan is a party. Japan also attracts a significant amount of foreign direct investment. According to the most recent publicly available government data, Japan foreign direct investment (stock) in 2019 equaled JPY33.9 trillion (a then record high), and equaled approximately JPY39.2 trillion as of the end of June 2020.

Japan's largest industries include automobiles, automotive parts manufacturing, electronic equipment, machine tools, chemicals, textiles and processed foods. Except for sectors deemed important to Japan's national security, foreign investors are free to make investments into Japan and own up to 100% of the equity in a Japanese company. There are also no restrictions on land ownership by foreign investors.

Japan has some of the strongest intellectual property laws in the world, making it ideal for businesses with research and development interests. Furthermore, businesses can expect strong support for research and development activities in Japan due to the fact that: (a) many municipal governments offer incentive packages to foreign companies who establish a research and development center in designated special economic development zones, and (b) various

municipal governments offer incentive packages to foreign companies who hire skilled domestic labor.

For companies seeking to establish a regional headquarters, Japan's location makes it ideal for conducting business in Japan and the rest of the Asia-Pacific region. Flights from Japan to surrounding cities (such as Beijing, Shanghai, Singapore, Hong Kong, Bangkok and Sydney) are short, affordable and often available several times throughout the day (pre-pandemic), making it easier for businesses to plan trips around normal work hours. In addition, Japan has a strong pool of highly skilled and diligent labor, empowered by increasing female and global talent.

Japan is also noted for its internal stability. The nation is considered one of the most politically stable countries in the world, as well as one of the safest to live and travel in for work and pleasure.

2. What are the key laws and regulations that govern company law in your jurisdiction?

Japan's Companies Act (Act No. 86 of July 26, 2005, as amended to date), along with its subordinate regulations (collectively, "Companies Act"), govern the formation of a company and corporate governance in Japan. A Japanese company is also required to establish articles of incorporation, which is an internal document that impacts a company's corporate governance.

3. What are the most common types of companies in your jurisdiction?

A *kabushik-kaishi* ("KK"), which is the equivalent of an ordinary corporation, and a *godo-kaisha* ("GK"), which is the equivalent of a limited

liability company, are the two most common forms to establish an operating company in Japan.

A GK offers the following advantages in comparison to a KK: (a) the capital registration tax and periodic maintenance/reporting costs associated with a GK are less than the corresponding costs associated with a KK, (b) a GK offers considerable flexibility with respect to corporate governance and designation of management responsibilities, (c) a GK can receive pass-through tax treatment for U.S. income tax purposes, while a KK cannot, and (d) completing a contribution-in-kind can be accomplished more quickly and with lower administrative costs, which can be helpful if a member plans to contribute assets (such as intellectual property rights, assets necessary to conduct the subject business, shares of a company, etc.) to a GK in exchange for a membership interest.

A KK offers the following advantages in comparison to a GK:

- a) a KK is led by its Representative Director(s), a title that is highly revered in Japanese business circles and may make it easier to attract quality executives;
- b) if equity in the Japan subsidiary will be granted to directors, employees or other third parties or if a capital markets transaction is contemplated, then a KK is the only practical corporate form to provide such equity participation;
- c) a KK offers practical advantages to a parent company that wishes to maintain tight control over the operations of a Japan subsidiary with minority shareholders since only a Representative Director of a KK is entitled to bind the company in contracts with third-parties (absent a board delegation to an additional person), while each member (or a designated executive officer) of a GK has such power of representation; and
- d) a KK takes its origins back to 1873, whereas a GK has been available only since 2006, so Japanese statutes, case law and local market practices are more developed with respect to a KK than with a GK (although such difference is likely to wane over time).

4. How long does it take to set up a company in your jurisdiction (for example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track a setup)?

It normally takes approximately one month to establish a company in Japan (regardless of whether a KK or a GK form is selected). Approximately two weeks is required to complete the paperwork for submission to the Legal Affairs Bureau, which is the Japanese governmental body responsible for the registration of companies. While the paperwork is not complex or detailed, original signatures are required (i.e., no fax or scans) for documentation submitted to the Legal Affairs Bureau, all documentation is in the Japanese language, and certain documents must be notarized (despite the pandemic). Upon receipt of a full submission, it normally takes the Legal Affairs Bureau up to two weeks to complete the registration of the establishment of the company. The date of establishment of the company is the date the application for registration was made, and the company may start its business operations from this date. There are no fast track setup procedures available in Japan.

The formation process can be completed more smoothly if a resident of Japan serves as the incorporator due to the local requirement that evidence from a local bank must be submitted to demonstrate receipt of the purchase price for the initial subscription of shares. A foreign investor new to Japan may have difficulty producing such documentation since it most likely will not have a local bank account. We can assist in satisfying this funds receipt delivery requirement.

5. What are the main registration requirements for companies in your jurisdiction?

A Japanese company, such as a KK or a GK, is established by commercial registration at the Legal Affairs Bureau. In general, among other things, the corporate name, the address of the headquarters office (and branch office, if any), the business purposes, the amount of capital, the total number of authorized shares, the types and numbers of the outstanding shares, the rules on



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Katsuyuki Yamaguchi has been a Managing Partner of Nishimura & Asahi NY LLP since 2018. He provides a wide range of advice on M&A/corporate legal affairs to many domestic and overseas listed and unlisted companies. He has engaged in a substantial number of transactions in the field of M&A over the years, ranging from complex, large-scale projects to small-scale projects, including business integration, acquisitions, organizational restructuring, joint ventures, and capital and business alliances for operating companies. He also has provided advice on corporate legal affairs common to many operating companies, including shareholder meetings, corporate governance, various commercial transactions and contracts, financing, personnel and labor affairs, disputes, crisis management, intellectual property, information technology, life sciences, and business succession. In recent years, he has supported a number of business acquisitions by Japanese companies in the United States, Europe, and Asia, as well as overseas expansion by Japanese companies, including into Latin America, Africa, and other developing countries, and has provided local support services after such expansion. He makes full use of his network with local law firms around the world and has significant experience with handling complex multi-country transactions. He also has developed a reputation for providing practical and clear legal advice that is consistent with modern business practices. Currently, he is also serving as an outside director or statutory auditor for several listed companies and is deeply involved in their management decisions.

Qualifications

- Admitted in Japan (1991)
- Admitted in New York (1998)

Education

- University of Paris II (D.S.U., Commercial Law) (1998-99)
- Columbia University School of Law (LL.M., Stone Scholar 1997)
- The University of Tokyo (LL.B.) (1989)

Other Professional Experience

- Managing Partner, Nishimura & Asahi NY LLP (2018-Present)
- Director, Lex Mundi (2016-2020)
- Statutory Auditor, Hakuodo DY Media Partners Inc. (2015-Present)
- Statutory Auditor, Hakuodo DY Holdings Inc. (2015-Present)
- Statutory Auditor, BrainPad Inc. (2013-Present)
- Statutory Auditor, Jupiter Telecommunications Co., Ltd. (2011-2018)
- Statutory Auditor, FreeBit Co.,Ltd. (2007-Present)
- Statutory Auditor, Rakuten, Inc (2001-Present)
- Simeon & Associes, Paris (1999)
- Debevoise & Plimpton, Paris (1998)
- Debevoise & Plimpton, New York (1997-1998)

Work Highlights

<<Deal list to be provided upon request>>

ABOUT AUTHOR

Representative Publications

<<English publications only>>

- LexisNexis Company Law Guide 2021 (Japan Chapter) (2021)
- The Legal 500: Corporate Governance Comparative Guide (Japan Chapter) (2019, 2020)
- Corporate Governance and Directors' Duties: Japan (Practical Law Global Guide: Corporate Governance and Directors' Duties 2018, 2019, 2020)
- Corporate Governance and Directors' Duties Global Guide (Japan Chapter) (Practical Law Corporate Governance and Directors' Duties Global Guide 2015/16, 2016/17)
- Corporate Governance and Directors' Duties Multi-jurisdictional Guide (Japan Chapter) (Practical Law Corporate Governance and Directors' Duties Multi-jurisdictional Guide 2012/13, 2013/14, 2014/15)

- Cross-border Corporate Governance and Directors' Duties handbook 2008-2011 (Japan Chapter) (PLC Cross-border Corporate Governance and Directors' Duties handbook 2008-2011)

<<Japanese publications upon request>>

Recognitions

- The Legal 500 Hall of Fame (2020)
- The Legal 500 Asia Pacific (2007-2019)
- Best Lawyers (2013-2021)
- ALB Japan Law Awards 2017
- The American Lawyer Global Legal Awards 2017

Languages

Japanese, English

the limitation of share transfer (if applicable), the name of the director(s), the name and address of the representative director(s), and the method of public notice are required to be registered. For an application for commercial registration, certain documents evidencing the matters to be registered are required.

Foreign investors may also conduct business in Japan by establishing a branch office. A branch office is also required to be registered at the Legal Affairs Bureau to begin its business operations in Japan. In general, among other things, the address of the branch office, the name and address of the representative in Japan, the date of establishment of the branch office, and the method of public notice are required to be registered.

After establishment, a company is required to promptly make various notifications, including a notification of incorporation to the national tax authority and the prefectural tax authority, and a notification to the Labor Standards Inspection Office and the Public Employment Security Office if it has employee(s).

6. What are the main post-registration reporting requirements for companies in your jurisdiction (e.g. annual reporting requirements: what to file, to whom is a company secretary required)?

A company is required to publicly disclose a simplified balance sheet for each fiscal year in the official gazette ("kampo") or a daily newspaper, or a full balance sheet on a website in accordance with its articles of incorporation. If a company falls under the definition of "large company" (a company with capital of JPY500 million or more or total debts of JPY20 billion or more), it is required to publicly disclose both its balance sheet and profit and loss statement. There is no similar reporting obligation for a branch office.

In the event of changes to the registered information of a company, it is required to update its commercial registry within two weeks.

Further, both companies and branch offices are required to file annual tax returns with the relevant tax office.

If a company is listed, there are extensive disclosure

obligations under the Financial Instruments and Exchange Act ("FIEA") and the various rules of the relevant stock exchanges.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

The Foreign Exchange and Foreign Trade Act ("FEFTA") primarily governs foreign investments in Japan and provides some restrictions on foreign investment in certain restricted businesses. The Ministry of Finance and the Ministry of Economy, Trade and Industry are primarily responsible for enforcing the FEFTA.

Under the FEFTA, a foreign investor is generally required to file a prior notification with Japan's Ministry of Finance and the competent ministry overseeing the industry in which the target is operating its business and wait for a specified period for the purchase of (a) one share or more of a private company or (b) more than 1% of the outstanding voting rights or the issued shares of a listed company, in each case, if the company engages in certain businesses that the Japanese government has deemed critical. This includes not only the industries that are regarded as critical from a traditional national security perspective, such as weapons, aircraft, nuclear, and energy, but also an expanded range of businesses including certain types of IT related manufacturing businesses, software development businesses and telecommunication services related businesses ("Regulated Business Segments"), unless an exemption applies. After its review of the notification, the government may recommend a change to the transaction scheme or order the cancellation of the investment.

In addition, certain investments by a foreign investor that do not require prior notification require a post-acquisition report to be submitted, depending on the type and size of the investment.

Even after the investment, if the company conducts business in a Regulated Business Segment, foreign investors will be required to obtain Japanese government approval to vote their shares for (a) their nominees (or those of a closely related person) to serve as a director

or company auditor of such Japanese company if the nomination is made by the foreign investor or a third party and (b) the transfer or cessation of a Regulated Business Segment if the proposal is made by the foreign investor.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

There are numerous corporate governance forms available for a company in Japan, especially if the company is listed. However, an overwhelming majority of privately held Japanese companies have adopted the corporate governance form of a KK that has a board of directors and a company auditor. A company having capital stock of JPY500 million or more or having liabilities of JPY20 billion or more is also required to appoint an accounting auditor.

The principal duties of directors under the Companies Act include the following:

- a) duty of care (i.e., directors must manage the business with the care of a good manager);
- b) duty of loyalty (i.e., directors must perform their duties for the company in a loyal manner);
- c) duty to monitor (i.e., directors must monitor the performance of other directors, including the Representative Director(s)); and
- d) duty to establish a risk management system (i.e., directors must establish internal control systems to manage risks associated with the business).

Despite the name, a company auditor is not an independent accounting firm. For a privately held company, a company auditor is an individual who monitors the execution of the directors' activities to help ensure compliance with Japanese law and reviews the company's internal control systems to help ensure the accuracy of the financial statements. See Question 21 for further information about company auditors.

Directors and company auditors who neglect their duties can be held liable to the company for damages arising as a result thereof. In addition,

directors and company auditors will be liable to third parties (e.g., creditors) for damages arising as a result of willful misconduct or gross negligence in the performance of their duties. Shareholders also may seek enforcement action against a director or company auditor by initiating a lawsuit on behalf of the company (i.e., a derivative claim).

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

A Japanese company can be owned by one shareholder (if organized as a KK) or one member (if organized as a GK).

If a KK has adopted a corporate governance form of directors without a board of directors, then at least one director must be appointed who has the authority to enter into contracts on behalf of the company. If a KK has adopted a board of directors corporate governance form, then at least three directors must be appointed, at least one of whom is designated a Representative Director (which provides such person with the authority to enter into contracts on behalf of the company). Only a natural person can serve as a director.

A GK does not have directors. Among the members, one or more managing members must be designated to undertake responsibilities similar to directors. A managing member can be a natural person or an entity. If an entity is designated to serve as the sole managing member, then such entity must select individual(s) to serve as executive officer(s) and perform the duties of the managing member. An executive officer does not need to be an employee of the member.

10. What are the requirements on how shares are offered in your jurisdiction?

Under the Companies Act, the same procedure is required to be followed when a company either issues new shares or sells outstanding shares that the company held as treasury shares. There are three methods of issuing new shares or selling outstanding shares, which are a public offering, a third-party allotment and a shareholder allotment.

In the case of a company with share transfer restrictions, the company generally issues new shares or sells outstanding shares by way of a shareholder allotment or a third-party allotment, which generally requires a special resolution at a shareholders' meeting. On the other hand, in the case of a company not subject to share transfer restrictions (i.e., including a listed company), the issuance of new shares or sale of outstanding shares requires the approval of a board of directors meeting. However, the approval of a shareholders meeting will also be required if the shares are to be issued at an especially favorable price to the subscribers. Further, if such issuance of new shares or sale of outstanding shares would cause a change in control, the company is required to notify each existing shareholder or make a public notice, and opposing shareholders who hold 10% or more of the outstanding voting rights may request an approval of a shareholders meeting in order to validate such issuance.

In addition, under the FIEA, when a company offers newly issued shares or sells outstanding shares, in general, a securities registration statement has to be filed with the Prime Minister. The securities registration statement includes detailed information regarding the company and the shares and is publicly available online once registered. There are some exemptions to the requirements under the FIEA including, similar to other jurisdictions, the equivalent of a private placement, where, among other conditions, the company is not offering securities to fifty or more investors, but this exemption does not apply if the company is listed.

In the case of a listed company, the Tokyo Stock Exchange's Securities Listing Regulations will also apply. If a listed company either issues new shares or sells outstanding shares corresponding to 25% or more of the existing issued voting shares or that changes the control of the listed company, then the company is required to obtain an opinion from an independent third party or obtain the approval of its shareholders.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?



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Mr. Bohrer is a Partner of our Firm and a leader of our Cross-Border Transactions Group. Mr. Bohrer was previously associated with top-tier U.S. international law firms for 12 years, and has experience running cross-border transactions on the ground in the United States, Japan, Singapore, India, Indonesia, and Thailand. Mr. Bohrer has represented U.S. and non-U.S. buyers and sellers in cross-border corporate transactions in various industries and deal forms, including stock and asset acquisitions, mergers, private equity and venture capital investments, joint ventures and strategic alliances.

Since joining Nishimura & Asahi in 2004, Mr. Bohrer has represented numerous multi-national clients in connection with their investments into Japan and their ongoing general commercial transactions (including insurance matters, franchising, licensing, employment, corporate governance and commercial real estate leasing matters). Mr. Bohrer also has extensive experience leading and documenting Japanese and cross-border due diligence exercises with respect to various industries, and representing Japanese clients in connection with their multi-jurisdiction corporate acquisitions.

Mr. Bohrer has represented U.S. issuers in the United States, foreign private issuers from numerous jurisdictions in Asia and global investment banks in connection with their various capital markets transactions, including registered initial and follow-on public offerings in the United States, Rule 144A/Regulation S equity and debt offerings, block trades, dual listings and privatizations, and also assessing whether exemptions exist to the application of U.S.

securities laws to overseas business transactions.

Mr. Bohrer writes and lectures widely on these and other topics.

Qualifications

- Admitted in New York (1993)
- Registered as a Gaikokuho Jimu Bengoshi (Primary Jurisdiction: New York, U.S.A.) (2005, voluntarily deregistered in 2018 and reregistered in 2020) (Not engaged in a Gaikokuho Kyodo Jigyō)

Education

- Georgetown University Law Center (J.D.) (1992)
- Wharton School of Business, University of Pennsylvania (1988)

Other Professional Experience

- Nishimura & Asahi (2020-Present)
- Nishimura & Asahi NY LLP (2018-2020)
- Nishimura & Asahi (2004-2018)
- Shearman & Sterling LLP (1999-2004)
- Morgan, Lewis & Bockius LLP (1997-1999)
- Mayer Brown (1992-1997)

Work Highlights

Available upon request

Representative Publications

Over 30 articles written on Japanese law
For full list of publications, please see below:
<https://www.jurists.co.jp/en/attorney/0081.html>

Languages

English

The two principal sources of employment law in Japan are the Labor Standards Act (Act No. 49 of April 7, 1947, as amended to date), and its Enforcement Ordinance (Ordinance of the Ministry of Health and Welfare, No. 23 of August 30, 1947), both of which provide minimum standards for the terms and conditions of employment contracts and general employment matters. Other important sources of employment law include the Labor Contracts Act, the Industrial Safety and Health Act, the Employment Security Act, the Act on Improvement of Employment Management of Part-Time Workers, and the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatch Workers.

An aspect of Japanese labor law that frequently catches foreign investors off-guard is that employment is not “at will,” so an employer in Japan cannot terminate an employee without good cause. Even if an employment contract stipulates that an employer may terminate the employment relationship for any reason, such provision normally will be held unenforceable as an unlawful attempt to bypass Japanese labor laws. The threshold for “good cause” in Japan is extremely high in comparison to many other countries. Japanese labor law stipulates that the termination of an employee is invalid unless there is “objective good reason” for the termination and it is “acceptable in light of socially accepted standards.” The foregoing standard is not defined or explained by Japanese statutes, which has given Japanese courts great latitude to determine when this standard is satisfied. Accordingly, employers in Japan normally negotiate a severance package with the affected employees, which calls for the employer to pay several months’ wages (or more) as a separation payment in exchange for the employee’s voluntary resignation. A company’s Representative Director(s) and most likely its directors who hold executive authority are not considered employees and, therefore, do not benefit from the pro-employee provisions of Japanese labor laws.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

As explained in Question 2, all Japanese companies are generally regulated by the Companies Act. The Ministry of Justice is responsible for administering and enforcing the Companies Act.

In addition, listed companies in Japan are also regulated by the FIEA, which the Financial Services Agency of Japan (“FSA”) is responsible for enforcing and the Securities Listing Regulations published by the Tokyo Stock Exchange, the largest securities exchange in Japan. The other stock exchanges generally follow the Tokyo Stock Exchange’s Securities Listing Regulations and publish quite similar regulations.

In addition to these laws and regulations, there are two important codes that are related to corporate governance matters. One of which is the Corporate Governance Code, which was introduced by the Tokyo Stock Exchange in 2015 (and revised in 2018 and 2021) and stipulates important corporate governance principles for all companies listed on securities exchanges in Japan. The latest revision to the Corporate Governance Code was released and became effective in most part on June 11, 2021, and aims to further ensure the effectiveness of corporate governance reform and attract global institutional investors by reducing the market segments of the Tokyo Stock Exchange from five to three, with one of these segments being the “Prime Market,” a segment available only to those companies that achieve a higher level of corporate governance. See Question 20 for further information about this restructuring of the Tokyo Stock Exchange. The other is the Stewardship Code, which was introduced by the FSA in 2014 (and revised in 2017 and 2020). These two codes work in tandem to encourage better corporate governance by listed companies in Japan.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

A foreign investor who wishes to work in

Japan must obtain an appropriate work visa in advance of entering Japan. Merely establishing a company in Japan does not automatically provide a foreign investor owner with a working visa or residency rights. However, the so-called Investor/Business Manager Visa may be obtained if a foreign investor establishes a company in Japan and satisfies certain conditions, including those relating to the scale of the business.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

The most important tax that applies to companies in Japan and their business activities is corporation tax. Corporation tax is a tax imposed on companies that are engaged in business activities in Japan on the profits generated by such business activities. The taxable income of a company is calculated by reducing the amount of gross revenue by the amount of deductible expenses. The current corporation tax rate is generally 23.2% with an exception for companies whose capital amount is JPY100 million or less. The company must file its tax return with the relevant tax office and pay the tax within two months from the end of each fiscal year. In addition to the national corporation tax, the local government where the company is located also imposes taxes on the company, including local corporation tax and local corporation inhabitant tax. The applicable rate of these taxes vary depending on the local government, which generally ends up with an effective corporate tax rate in the lower to middle 30% range on taxable income.

Another important tax that applies to companies in Japan is consumption tax, which is quite similar to the value-added tax or sales tax in various countries. The current consumption tax rate is generally 10% of the sales amount with a reduced tax rate of 8% for certain sales transactions.

15. How does the competition law in your jurisdiction regulate companies?

The Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of April 14, 1947, as amended to date, "Anti-

monopoly Act"), along with its subordinate regulations, governs competition matters in Japan. The Japan Fair Trade Commission ("JFTC") is the competition authority in Japan and oversees competition matters. In addition to the above law and regulations, the JFTC publishes various guidelines on competition matters.

The Anti-monopoly Act prohibits private monopolization and unreasonable restraint of trade, including cartels and bid rigging. It also prohibits unfair trade practices, such as the unjust use of a superior bargaining position over the counterparty. The Act also governs merger filing matters.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Japan has various laws to protect intellectual property in various forms, such as patents, trademarks, designs and copyrights. The Japan Patent Office ("JPO") administers all applications for patents, trademarks and designs.

Patents

The Patent Act (Act No. 121 of April 13, 1959, as amended to date) governs patent matters in Japan. An invention, which is defined as a highly advanced creation of technical ideas by utilizing the law of nature, can be patented if it involves novelty, an inventive step, and the potential for industrial application. Patented inventions can be registered with the JPO. The patent registration is valid for 20 years from the filing date of the application.

Trademarks

The Trademark Act (Act No. 127 of April 13, 1959, as amended to date) governs trademarks matters in Japan. Marks that can be registered as trademarks are any character, figure, sign or three-dimensional shape or color, or any combination thereof; sounds, or anything else specified by Cabinet Order that is used by a person in connection with the goods of a person who produces, certifies or assigns the goods as a business, or is used by a person in connection with the services that the person

provides or certifies as its business. Trademarks can be registered with the JPO. Registered trademarks are valid for 10 years from the date of registration (validity term can be extended if the registration is renewed).

Designs

The Design Act (Act No. 125 of April 13, 1959, as amended to date) governs registered design matters in Japan. Designs that can be registered are any shape, pattern or color, or any combination thereof, of an article, that creates an aesthetic impression through the eye, which has novelty, industrial utility and creativeness. A design that is identical or similar to a design filed for registration previously cannot be registered. Designs can be registered with the JPO. The design registration is valid for 25 years from the filing date of the application. Unregistered designs can be protected by the Unfair Competition Prevention Act (Act No. 47 of May 19, 1993, as amended to date).

Copyright

The Copyright Act (Act No. 48 of May 6, 1970, as amended to date) governs copyright matters in Japan. Authors of qualifying works are provided certain rights under the Copyright Act without any registration. Work means a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain. Voluntary registration is available, but it is not commonly used. Copyright-eligible works are protected for 70 years after the death of their author.

17. Does your jurisdiction have laws or regulations that govern data privacy?

Yes. The Act on the Protection of Personal Information (Act No. 57 of May 30, 2003, as amended to date) and various guidelines issued thereunder (collectively, "APPI") is the primary law regarding data protection in Japan. Many view the APPI as having requirements as rigorous as Europe's GDPR. An amendment to the APPI was enacted on June 5, 2020 and is scheduled to become fully effective on April 1, 2022. This amendment changes portions of the APPI relating to (a) individual rights, (b) responsibilities of businesses, (c) measures concerning the utilization of data, (d) penalties, and (e) cross-border transfer and extraterritorial

applications. The following overview of the APPI takes into account these 2022 amendments to the APPI.

The APPI applies to three categories of information and data used during the course of business, each of which is governed by different rules: (a) personal information (which is broadly defined to include any information that alone or in combination with other data can identify a living individual), (b) personal data (personal information contained within a personal information database), and (c) retained personal data (personal data that a business operator handling personal information has the authority to disclose, correct, add to or subtract, erase, or discontinue the provision of to a third party).

Generally speaking:

1. for personal information, a "business operator handling personal information" (defined as any person using personal information databases for business) must specify the purpose of use for personal information it handles to the extent possible, and must comply with the following rules: (a) a business operator must not use the personal information beyond the scope necessary to achieve the purpose (unless the individual's consent is obtained), and (b) must not change the purpose of use beyond a scope that has a reasonably substantial relationship with the original purpose of use;
2. for personal data, a business operator handling personal information must (a) not acquire personal information by deception or other wrongful means, and (b) upon acquisition, it must notify the individual of or publicly announce the purpose of use (unless an enumerated exception applies); and
3. for retained personal data, a business operator handling personal information must take necessary and proper measures for the prevention of leakage, loss, or damage, and for other security control of the personal information, and must endeavor to promptly delete personal information when its use is no longer required.

The APPI also generally stipulates that business

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Yusuke Urano has advised on numerous M&A transactions, such as domestic/cross-border acquisitions and alliances, TOB transactions, going private/MBO transactions, joint venture transactions, venture capital investments, and group reorganizations. He has also handled various cross border cartel cases for domestic and foreign clients. He also regularly provides domestic and foreign clients with corporate governance, compliance, risk management, labor, intellectual property and other general corporate advice.

Qualifications

- Admitted in Japan (2006)

Education

- New York University School of Law (LL.M, Advanced Professional Certificate in Law & Business) (2017)
- Keio University (LL.B.) (2003)

Other Professional Experience

- 2018 - Nishimura & Asahi NY LLP
- 2015 - 2016 Schulte Roth & Zabel LLP, New York
- 2015 JOLED Inc. (part-time)
- 2006 - Nishimura & Asahi

Representative Publications

- "Company and Foreign Investment Law Guide 2021 (Company Law Jurisdiction: Japan Chapter)" (LexisNexis) (December, 2020)
- "Legal Practice in the Age of Cloud Computing" (Shoji Homu) (Co-Author) (January 2011)
- "Issues concerning Cloud Computing" (Shoji Homu) (Feb - June 2011 (serial publication))
- "Legal Practice in International Business" (Co-Author) (LexisNexis Japan) (January 2009)
- "Practical Use of Short Form Reorganization under the Companies Act" (Chuokezai-sha) (March 2007)

Languages

Japanese (Native), English

operators handling personal information must not provide personal information to a third party without obtaining the individual's prior opt-in consent. A "third party" means any person other than the business operator handling personal information (including an affiliate) that is provided with personal information. There are significant exceptions to the foregoing rule allowing the provision of personal data to a third party without obtaining the individual's prior consent, including if notice and certain details are provided to individuals, if the personal data is transferred as a result of a merger, acquisition or

similar succession transaction, or if the personal data is transferred to a third-party service provider to process the personal data solely on behalf of the business operator handling personal information.

18. Are there any incentives to attract foreign companies to your jurisdiction?

The Japanese government offers incentives to attract foreign companies to Japan, including tax incentives that are available for companies opening or expanding their headquarters' functions in

local areas, incentives regarding Special Zones, incentives based on the Industrial Competitiveness Enhancement Act, incentives based on the Act on Special Measures for Productivity Improvement, the tax deduction system based on the Regional Future Investment Promotion Act, tax incentives for research and development, etc.

In addition to the central government's incentives, many local governments (prefectures and municipalities) also offer their own unique incentives to facilitate investment into their respective regions.

19. What is the law on corporate insolvency in your jurisdiction?

Court procedures for corporate insolvency are roughly categorized into liquidation procedures and restructuring procedures. Liquidation procedures include bankruptcy proceedings governed by the Bankruptcy Act (Act No. 75 of June 2, 2004, as amended to date), which is similar to the Chapter 7 proceedings in the United States, and special liquidation proceedings governed by the Companies Act. Restructuring procedures include civil rehabilitation proceedings governed by the Civil Rehabilitation Act (Act No. 225 of December 22, 1999, as amended to date) and corporate reorganization proceedings governed by the Corporate Reorganization Act (Act No. 154 of December 13, 2002, as amended to date).

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

The Companies Act was amended in December 2019 (the "Amended Act"). Most of the amendments became effective on March 1, 2021, while the remainder will become effective before June 2023.

The Amended Act includes various corporate governance changes, such as (a) requiring listed companies to appoint at least one outside director (although most companies trading on the Tokyo Stock Exchange already have at least one outside director in accordance with listing regulations, the amendment is intended to reinforce corporate governance by aligning Japanese corporate law), (b) compelling a company to explain the company's policy on its directors' compensation scheme at a shareholders' meeting, (c) allowing companies to distribute shareholders meeting materials

in electronic form to shareholders through the Internet without the shareholder's prior consent to this distribution method, and (d) permitting companies to limit the number of shareholder proposals per single shareholder to ten.

On June 11, 2021, amendments to Japan's Corporate Governance Code came into effect, which encourage listed companies through the creation of new market segments (as explained immediately below) to (i) enhance board independence by increasing the number of independent directors from at least two to at least one-third, (ii) promote diversity in senior management by appointing more females, non-Japanese, and mid-career professionals, (iii) develop and disclose sustainability and ESG initiatives, and (iv) use electronic voting platforms and publish periodic reports in English.

On April 4, 2022, the existing five stock market segments operated by the Tokyo Stock Exchange (including the First Section, which is a step-up market generally composed of large companies, and the Second Section, Mothers, JASDAQ Standard and JASDAQ Growth) will be restructured into three new market segments: the Prime Market, Standard Market, and Growth Market. To be listed on the Prime Market (the premiere segment), companies will be required to strengthen their corporate governance systems by adopting various measures referenced in the amended Corporate Governance Code (as explained immediately above). It is expected that this market restructuring will boost listed companies' sustainable growth and mid-to long-term corporate value, and attract a diverse range of global institutional and domestic investors.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

A unique feature of the Companies Act is the company auditors system ("kansayaku"). Company auditors supervise the performance of directors' duties. For this purpose, company auditors are entitled to procure a report concerning the business from directors and employees, and further investigate the status of the business and finances of the company. The term of office for company auditors generally expires at the end of the general shareholders meeting for the last business year ending within four years of the date of appointment. A company with a restriction on assignment of

shares may extend such period to a maximum of ten years by stipulating so in its articles of incorporation.

22. What changes in company law have been implemented in light of current events? Are there any “new normal” practical tips in your jurisdiction parties should be aware of when dealing with company law?

There is an impetus to modernize the way Japanese companies conduct business due to COVID-19. Japanese companies have traditionally used a “paper and seal culture” to bind agreements, which is now thought to be an impediment to productivity. Japan recognized e-signatures as a valid legal form of signature under the Act on Electronic Signatures and Certification Business (Act No. 102 of May 31, 2000). However, there has been uncertainty whether common e-signature methods provided by vendors are permitted under the legislation. Consequently, even though it has been 20 years’ since the legislation was enacted, the use of e-signatures is uncommon in Japanese companies. However, in September 2020 the Japanese government announced its opinion that the most common e-signature methods available in Japan create a valid legal form of signature. As the remote work style stemmed from the COVID-19 pandemic is expected to continue for a longer period than generally expected, this announcement has accelerated the adoption of e-signatures by companies operating in Japan (though original signatures are still required for many documents submitted to Japanese government agencies).

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**NISHIMURA
& ASAHI**

1. 您所在司法管辖区的外国公司一般情况如何（例如，常见形式、成立难度、限制性制度、管辖区是否开放、欢迎外国投资）？

日本是世界第三大经济体，营商环境友好，欢迎外国投资者，提供大量的投资机会。在日营商意味着进入一个拥有近1.2亿成熟、富裕消费者的广阔市场，况且日本已加入21项经济伙伴关系和自由贸易协定，在日营商将享有大量出口机会。日本还吸引了大量外国直接投资。根据最新公开的政府数据，2019年，日本获得的外国直接投资（股票）达到33.9万亿日元（当时创下历史新高），截至2020年6月底，逼近39.2万亿日元。

日本最大的工业有汽车、汽车零部件制造、电子设备、机床、化工、纺织和加工食品。除被视为对日本国家安全意义重大的行业外，外国投资者可以自由地在日本进行投资，并全资控股日本公司。对外国投资者的土地所有权也有限制。

日本拥有世界先进的知识产权法，是研发类企业的理想选择。此外，由于（a）许多市政府向在指定的经济特区设立研发中心的外国公司提供激励方案，（b）各市政府为雇佣日本国内熟练劳动力的外国公司提供激励方案，企业有望获得在日本开展研发活动的有力支持。

对于寻求设立地区总部的公司来说，日本的地理位置优越，有利于公司在日本、乃至亚太地区开展业务。从日本到周边城市（如北京、上海、新加坡、香港、曼谷和悉尼）的航班航程短、价格不高，且通常一天中有好几趟（疫情前），使企业更容易在正常工作时间内安排行程。此外，日本拥有大量工作勤勉的熟练劳动力，不乏女性和全球精英，人力资源丰富。

日本也以内部稳定著称。日本是其中一个世界上政治最稳定的国家，也是工作娱乐、生活旅行最安全的国家之一。

2. 在您所处司法管辖区，公司法的主要法律法规有哪些？

日本《公司法》（2005年7月26日第86号法案，修订至今）及其附属法规（统称“公司法”）对日本的公司组建和公司治理进行规范。日本公司还须制定公司章程，公司章程是影响公司治理的内部文件。

3. 在您所处司法管辖区，最常见的公司类型是什么？

kabushiki-kaisha（“KK”）（相当于普通公司）和godo-kaisha（“GK”）（相当于有限责任公司）是在日本成立运营公司最常见的两种形式。

相比KK，GK具有以下优势：（A）GK涉及的资本登记税和定期维护/报告成本低于KK涉及的相应成本；（b）GK在公司治理和指定管理责任方面具有相当大的灵活性；（c）就美国所得税而言，GK可以享受转嫁税收待遇，而KK不能；（d）可以更快地完成实物捐赠，并且管理成本更低，如果成员计划向GK捐赠资产（如知识产权、开展目标业务所需的资产、公司股份等），以换取成员权益，这种公司形式会更有利。

相比GK，KK具有以下优势：

- KK由代表董事领导，这一头衔在日本商界备受推崇，更容易吸引高质量的高管；
- 如果日本子公司的股权授予董事、员工或其他第三方，或者计划进行资本市场交易，KK是实现参股的唯一实际公司形式；
- KK为希望通过少数股东严格控制日本子公司运营的母公司带来实际优势，因为只有KK的代表董事有权与第三方签订合同约束公司（如董事会未授权其他人），而GK的每位成员（或指定主管人员）均有代表权；以及
- KK的起源可以追溯到1873年，而GK从

2006年才开始出现，因此在日本的制定法、判例法和当地市场实践方面，KK比GK更为成熟（但这种差异可能会随着时间的推移而减弱）。

4. 在您所处司法管辖区，成立一家公司需要多长时间（例如，根据您的经验，最快需要多长时间，平均时间，最慢会是多长时间——是否有快速通道机制）？

在日本成立一家公司通常需要大约一个月的时间（无论选择KK还是GK形式）。大约需要两周的时间来完成提交给法务局的文书工作，法务局是负责公司注册的日本政府机构。虽然文书工作并不复杂或详尽，但提交给法务局的文件需要原始签名（即不接受传真或扫描），所有文件均采用日语，某些文件必须经过公证（即使仍有疫情）。法务局在收到完整的申请后，通常需要长达两周的时间完成公司成立登记。公司成立日期为申请登记之日，公司可以自该日开始营业。在日本成立公司没有快速通道机制。

如果由于当地要求，必须提交当地银行的证据，证明收到首次认购股份的购买价款，则由日本居民担任公司创办人，可以更顺利地组建流程。新到日本的外国投资者可能很难提供此类文件，因为他们很可能没有本地银行账户。我们可以协助满足这种收款证明要求。

5. 在您所处司法管辖区，公司的主要注册要求是什么？

在法务局办理商业注册，可以成立KK或GK等日本公司。一般而言，须登记公司名称、总部办公地（和分公司（如有））地址、业务目的、资本金额、额定股份总数、发行在外股份的类型和数目、股份转让限制规则（如适用）、董事姓名、代表董事的姓名和地址以及公告方式等信息。申请商业注册时，需要提供证明登记事项的某些文件。

外国投资者也可以通过设立分公司在日本开展业务。分公司也须在法务局注册，方可在日本开展业务。一般而言，须登记分公司地址、驻日本代表的姓名和地址、分公司的成立日期以及公告方式等信息。

公司成立后，需要及时发出各种通知，包括向国家税务局和地税局发出公司成立通知，以及向劳动基准监督署和公共就业保障办公室发出通知（如有员工）。

6. 在您所处司法管辖区，公司注册后的主要申报要求是什么（例如，年度申报要求：申报什么、向哪些机构申报、是否需设公司秘书）？

根据公司章程，公司必须在官方公报（“kampo”）或日报上公开披露每个财年的简化资产负债表，或在网站上公开披露完整的资产负债表。如果一家公司属于“大公司”（资本为5亿日元或以上，或债务总额为200亿日元或以上的公司），须公开披露资产负债表和损益表。分公司没有类似的报告义务。

如果公司的注册信息发生变化，必须在两周内更新商业登记。

此外，公司和分公司均须向相关税务局提交年度纳税申报表。

如果公司上市，根据《金融工具和交易法》（“FIEA”）和相关证券交易所的各种规则，负有广泛的披露义务。

7. 在您所处司法管辖区，是否有对外国公司的任何控制因素或限制？

《外汇和对外贸易法》（“FEFTA”）主要管理在日本的外国投资，并对某些受限制业务的外国投资施加一些限制。财务省和经济产业省主要负责执行《外汇和对外贸易法》。

根据《外汇和对外贸易法》，如公司从事日本政府认为至关重要的某些业务，外国投资者通常需要向日本财务省和监管目标公司业务所在行业的主管部门提交事先通知，并在指定期间内等待购买（a）私人公司的一股或多股股份，或（b）上市公司的流通股表决权或已发行股份的1%以上。这不仅包括从传统国家安全角度被视为关键的行业，如武器、飞机、核能和能源，还包括更广泛的业务，包括某些类型的IT相关制造业、软件开发业务和电信服务相关业务（“受规管业务部门”），适用豁免的情况除外。在审查通知后，政府可建议公司更改交易方案或下令取消投资。

此外，外国投资者进行某些投资时，虽无需事先通知，但须提交收购后报告，具体内容取决于投资的类型和规模。

即使在投资后，如果公司在受规管业务部门开展业务，外国投资者还须获得日本政府的批准，方可就股份行使表决权。（a）同意外国投资者或第三方提出的代名人（或密切相关人士的代名人）担任日本公司的董事或公司审计



Katsuyuki Yamaguchi

合伙人

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Katsuyuki Yamaguchi has been a Managing Partner of Nishimura & Asahi NY LLP since 2018. He provides a wide range of advice on M&A/corporate legal affairs to many domestic and overseas listed and unlisted companies. He has engaged in a substantial number of transactions in the field of M&A over the years, ranging from complex, large-scale projects to small-scale projects, including business integration, acquisitions, organizational restructuring, joint ventures, and capital and business alliances for operating companies. He also has provided advice on corporate legal affairs common to many operating companies, including shareholder meetings, corporate governance, various commercial transactions and contracts, financing, personnel and labor affairs, disputes, crisis management, intellectual property, information technology, life sciences, and business succession. In recent years, he has supported a number of business acquisitions by Japanese companies in the United States, Europe, and Asia, as well as overseas expansion by Japanese companies, including into Latin America, Africa, and other developing countries, and has provided local support services after such expansion. He makes full use of his network with local law firms around the world and has significant experience with handling complex multi-country transactions. He also has developed a reputation for providing practical and clear legal advice that is consistent with modern business practices. Currently, he is also serving as an outside director or statutory auditor for several listed companies and is deeply involved in their management decisions.

Qualifications

- Admitted in Japan (1991)
- Admitted in New York (1998)

Education

- University of Paris II (D.S.U., Commercial Law) (1998-99)
- Columbia University School of Law (LL.M., Stone Scholar 1997)
- The University of Tokyo (LL.B.) (1989)

Other Professional Experience

- Managing Partner, Nishimura & Asahi NY LLP (2018-Present)
- Director, Lex Mundi (2016-2020)
- Statutory Auditor, Hakuodo DY Media Partners Inc. (2015-Present)
- Statutory Auditor, Hakuodo DY Holdings Inc. (2015-Present)
- Statutory Auditor, BrainPad Inc. (2013-Present)
- Statutory Auditor, Jupiter Telecommunications Co., Ltd. (2011-2018)
- Statutory Auditor, FreeBit Co.,Ltd. (2007-Present)
- Statutory Auditor, Rakuten, Inc (2001-Present)
- Simeon & Associates, Paris (1999)
- Debevoise & Plimpton, Paris (1998)
- Debevoise & Plimpton, New York (1997-1998)

Work Highlights

<<Deal list to be provided upon request>>

Representative Publications

- <<English publications only>>
- LexisNexis Company Law Guide 2021 (Japan Chapter) (2021)
 - The Legal 500: Corporate Governance Comparative Guide (Japan Chapter) (2019, 2020)
 - Corporate Governance and Directors' Duties: Japan (Practical Law Global Guide: Corporate Governance and Directors' Duties 2018, 2019, 2020)
 - Corporate Governance and Directors' Duties Global Guide (Japan Chapter) (Practical Law Corporate Governance and Directors' Duties Global Guide 2015/16, 2016/17)
 - Corporate Governance and Directors' Duties Multi-jurisdictional Guide (Japan Chapter) (Practical Law Corporate Governance and Directors' Duties Multi-jurisdictional Guide 2012/13, 2013/14, 2014/15)

- Cross-border Corporate Governance and Directors' Duties handbook 2008-2011 (Japan Chapter) (PLC Cross-border Corporate Governance and Directors' Duties handbook 2008-2011)

<<Japanese publications upon request>>

Recognitions

- The Legal 500 Hall of Fame (2020)
- The Legal 500 Asia Pacific (2007-2019)
- Best Lawyers (2013-2021)
- ALB Japan Law Awards 2017
- The American Lawyer Global Legal Awards 2017

Languages

Japanese, English

师；(b) 同意外国投资者提出的转让或终止受规管业务部门的提案。

8. 在您所处司法管辖区，公司的董事（或家族管理结构）和法律责任问题的典型结构是什么？

日本有多种企业治理形式，尤其是在公司上市的情况下。不过，绝大多数日本私人公司都采用KK的企业治理形式，设董事会和公司审计师。股本在5亿日元或以上或负债达到200亿日元或以上的公司也必须任命审计师。

根据公司法，董事的主要义务如下：

- 注意义务（即董事在管理业务必须秉持优秀管理者的谨慎态度）；
- 忠实义务（即董事必须忠诚履行对公司的义务）；
- 监督义务（即董事必须监督其他董事的表现，包括代表董事）；以及
- 建立风险管理系统的义务（即董事必须制定内部控制制度，管理与业务相关的风险）。

虽然称为审计师，但公司审计师并不是独立的会计师事务所。对于私人公司，公司审计师是

监督董事活动执行情况的个人，有助于确保遵守日本法律，并审查公司内部控制制度，确保财务报表的准确性。有关公司审计师的更多信息，请参见问题21。

董事和公司审计师怠忽职守，须对公司承担损害赔偿赔偿责任。此外，董事和公司审计师应就履职过程中的故意不当行为或重大过失而造成的损害，对第三方（如债权人）承担责任。股东还可以通过代表公司提起诉讼（即派生诉讼），寻求对董事或公司审计师强制执行。

9. 在您所处司法管辖区，成立公司所需的最低董事和股东人数是多少？是否要求董事必须是自然人？

日本公司可以由一名股东（对于KK）或一名成员（对于GK）拥有。

如果KK采用了无董事会的董事治理形式，必须任命至少一名有权代表公司签订合同的董事。如果KK采用董事会的企业治理形式，必须任命至少三名董事，其中至少一名董事为代表董事（授权此人代表公司签订合同）。只有自然人才能担任董事。

GK没有董事。在成员中，必须指定一名或多



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外国法合伙人

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Mr. Bohrer is a Partner of our Firm and a leader of our Cross-Border Transactions Group. Mr. Bohrer was previously associated with top-tier U.S. international law firms for 12 years, and has experience running cross-border transactions on the ground in the United States, Japan, Singapore, India, Indonesia, and Thailand. Mr. Bohrer has represented U.S. and non-U.S. buyers and sellers in crossborder corporate transactions in various industries and deal forms, including stock and asset acquisitions, mergers, private equity and venture capital investments, joint ventures and strategic alliances.

Since joining Nishimura & Asahi in 2004, Mr. Bohrer has represented numerous multi-national clients in connection with their investments into Japan and their ongoing general commercial transactions (including insurance matters, franchising, licensing, employment, corporate governance and commercial real estate leasing matters). Mr. Bohrer also has extensive experience leading and documenting Japanese and cross-border due diligence exercises with respect to various industries, and representing Japanese clients in connection with their multi-jurisdiction corporate acquisitions.

Mr. Bohrer has represented U.S. issuers in the United States, foreign private issuers from numerous jurisdictions in Asia and global investment banks in connection with their various capital markets transactions, including registered initial and follow-on public offerings in the United States, Rule 144A/Regulation S equity and debt offerings, block trades, dual listings and privatizations, and also assessing whether exemptions exist to the application of U.S.

securities laws to overseas business transactions.

Mr. Bohrer writes and lectures widely on these and other topics.

Qualifications

- Admitted in New York (1993)
- Registered as a Gaikokuho Jimu Bengoshi (Primary Jurisdiction: New York, U.S.A.) (2005, voluntarily deregistered in 2018 and reregistered in 2020) (Not engaged in a Gaikokuho Kyodo Jigyō)

Education

- Georgetown University Law Center (J.D.) (1992)
- Wharton School of Business, University of Pennsylvania (1988)

Other Professional Experience

- Nishimura & Asahi NY LLP (2018-2020)
- Nishimura & Asahi (2004-2018)
- Shearman & Sterling LLP (1999-2004)
- Morgan, Lewis & Bockius LLP (1997-1999)
- Mayer Brown (1992-1997)

Work Highlights

Available upon request

Representative Publications

Over 30 articles written on Japanese law
For full list of publications, please see below:
<https://www.jurists.co.jp/en/attorney/0081.html>

Languages

English

名管理成员承担与董事类似的职责。管理成员可以是自然人或实体。如果实体被指定为唯一管理成员，该实体必须选择个人担任主管人员，履行管理成员的职责。主管人员无需是成员的雇员。

10. 您所在司法管辖区对发售股份有何要求？

根据公司法，公司发行新股或出售作为库存股持有的流通股时，须遵循相同的程序。发行新股或出售流通股的方式有三种，即公开发售、第三方配股和股东配股。

对于有股份转让限制的公司，公司一般通过股东配股或第三方配股的方式发行新股或出售流通股，这通常需要在股东会上通过特别决议。另一方面，对于不受股份转让限制的公司（包括上市公司），发行新股或出售流通股须经董事会会议批准。但是，如果股份以特别优惠的价格发行给认购人，还需要股东会批准。此外，如果发行新股或出售流通股会导致控制权变更，公司须通知现有全体股东或发出公告，持有10%或以上流通股表决权的股东可要求股东会批准，认可发行。

此外，根据《金融工具和交易法》，公司发行新股或出售流通股时，通常必须向首相提交证券登记声明。证券登记声明包括有关公司和股份的详细信息，登记后在网上公开。与其他司法管辖区类似，在某些情况下《金融工具和交易法》的要求能被豁免，包括私募，即公司向50名或50名以上的投资者发售证券时，可享受豁免，但若为上市公司则此豁免不适用。

对于上市公司，还适用东京证券交易所的证券上市条例。如果上市公司发行的新股或出售的流通股，达到现有已发行有表决权股份的25%或以上，或会变更上市公司的控制权，公司需要获得独立第三方的意见或获得股东的批准。

11. 在您所处司法管辖区，公司应了解哪些主要的雇佣法律法规？雇佣法是否有任何方面受到严格监管？

日本的雇佣法主要有《劳动基准法》（1947年4月7日第49号法案，修订至今）及其执行条例（日本厚生省条例，1947年8月30日第23号），二者针对雇佣合同的条款和条件以及一般雇佣事宜提出最低标准。雇佣法的其他重要依据

还有《劳动合同法》、《劳动安全卫生法》、《职业安定法》、《改善兼职工就业管理法》以及《确保劳动者派遣事业合理运营及改善派遣劳动者就业条件法》。

日本劳动法中经常让外国投资者措手不及的一点是，日本采用的不是“任意”雇佣制，缺乏充足理由，雇主不能解雇雇员。即使雇佣合同规定雇主可以出于任何原因终止雇佣关系，该条款通常也被视为企图规避日本劳动法的非法规定而无法执行。与许多其他国家相比，日本的“充足理由”门槛极高。日本劳动法规定，除非有“客观的充足理由”解雇雇员，并且“从社会公认的标准看可以接受”，否则解雇行为无效。日本法规没有对上述标准进行定义或解释，所以日本法院有极大的裁量权确定是否符合标准。因此，日本的雇主通常会与受影响的雇员协商遣散费方案，由雇主支付几个月（或更长）的工资作为离职金，以换取雇员自愿辞职。公司的代表董事和拥有行政权的董事很可能不被视为雇员，因此不适用日本劳动法的雇员保护条款。

12. 您所处司法管辖区施行何种企业治理制度？哪些机构或政府部门监管企业治理？

如问题2所述，所有日本公司通常受公司法的监管。法务省负责管理和执行公司法。

此外，日本的上市公司也受到《金融工具和交易法》的监管，日本金融服务局（FSA）负责执行日本最大的证券交易所——东京证券交易所发布的证券上市条例。其他证券交易所通常遵循东京证券交易所的证券上市条例，并发布类似的条例。

除以上法律法规外，还有两项与企业治理事项相关的重要准则。其中之一是《企业治理准则》，该准则由东京证券交易所于2015年发布（并于2018年和2021年修订），为在日本证券交易所上市的所有公司规定了重要的企业治理原则。《企业治理准则》的最新修订版于2021年6月11日发布并大部分生效，旨在进一步确保企业治理改革的效果，并将东京证券交易所的细分市场从5个减少到3个，其中一个细分市场是仅适用于实现更高企业治理水平的公司的“优质市场”，藉此吸引全球机构投资者。有关东京证券交易所此次结构调整的更多信息，请参见问题20。另一项是《尽职管理准则》，由金融服务局于2014年发布（并



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Yusuke Urano has advised on numerous M&A transactions, such as domestic/cross-border acquisitions and alliances, TOB transactions, going private/MBO transactions, joint venture transactions, venture capital investments, and group reorganizations. He has also handled various cross border cartel cases for domestic and foreign clients. He also regularly provides domestic and foreign clients with corporate governance, compliance, risk management, labor, intellectual property and other general corporate advice.

Qualifications

- Admitted in Japan (2006)

Education

- New York University School of Law (LL.M, Advanced Professional Certificate in Law & Business) (2017)
- Keio University (LL.B.) (2003)

Other Professional Experience

- 2018 - Nishimura & Asahi NY LLP
- 2015 - 2016 Schulte Roth & Zabel LLP, New York
- 2015 JOLED Inc. (part-time)
- 2006 - Nishimura & Asahi

Representative Publications

- "Company and Foreign Investment Law Guide 2021 (Company Law Jurisdiction: Japan Chapter)" (LexisNexis) (December, 2020)
- "Legal Practice in the Age of Cloud Computing" (Shoji Homu) (Co-Author) (January 2011)
- "Issues concerning Cloud Computing" (Shoji Homu) (Feb - June 2011 (serial publication))
- "Legal Practice in International Business" (Co-Author) (LexisNexis Japan) (January 2009)
- "Practical Use of Short Form Reorganization under the Companies Act" (Chuokezai-sha) (March 2007)

Languages

Japanese (Native), English

于2017年和2020年修订)。这两项准则发挥协同效应，鼓励日本上市公司改善企业治理。

13. 在您所处司法管辖区成立公司是否会授予某种居留权？为获得居留权（如适用），是否必须与当地入（如管辖区的公民）合伙或成立合资企业？

希望在日本工作的外国投资者必须在进入日本之前获得适当的工作签证。仅仅在日本成立公司，并不会自动令外国投资者拥有工作签证或居留权。但是，如果外国投资者在日本设立公司并满足某些条件，包括与业务规模有关的条

件，可以获得投资者/商业管理人签证。

14. 在您所处司法管辖区，公司在什么情况下须纳税？您所处司法管辖区对公司可能征收的主要税种有哪些？

适用于日本公司及其业务活动的最重要税种是法人税。法人税是对在日本从事商业活动的公司征收的一种税，针对该商业活动产生的利润征收。公司应纳税所得额的计算方法为总收入减去可扣除费用。法人税的现行税率一般为23.2%，资本额不超过1亿日元的公司除外。公司必须向相关税务局提交纳税申报表，并在

每个财政年度结束起两个月内缴纳税款。除国家层面的法人税外，公司所在地的地方政府亦会对公司征税，包括地方法人税和地方居民税。这些税收的适用税率因地方政府而异，实际法人税税率一般是中等税率30%及以下。

另一个适用于日本公司的重要税种是消费税，这与各国的增值税或销售税非常相似。消费税的现行税率一般为销售额的10%，某些销售交易的税率则降低至8%。

15. 在您所处司法管辖区，竞争法如何监管公司？

《禁止私人垄断与维护公平贸易法》（1947年4月14日第54号法案，修订至今，以下简称“反垄断法”）及其附属法规对日本的竞争事宜进行管理。日本公平贸易委员会（“JFTC”）是日本的竞争主管机关，负责监督竞争事宜。除上述法律法规外，日本公平贸易委员会还发布了关于竞争事宜的各种指导方针。

反垄断法禁止私人垄断和对贸易的不合理限制，包括卡特尔和串通投标。此外还禁止不公平的贸易做法，例如不公正地利用高于对方的谈判地位。反垄断法还管理合并申报事宜。

16. 在您所处司法管辖区，公司应了解哪些主要知识产权？

日本有各种法律保护各种形式的知识产权，如专利、商标、外观设计和版权。日本专利局（“JPO”）管理所有专利、商标和外观设计的申请。

专利：
《专利法》（1959年4月13日第121号法案，修订至今）管辖日本的专利事务。发明是指利用自然法则进行的高度先进的技术创造，具备新颖性、创造性和工业应用潜力的，可以申请专利。专利发明可以在日本专利局注册。专利注册自申请日起20年内有效。

商标：
《商标法》（1959年4月13日第127号法案，修订至今）管辖日本的商标事宜。可注册为商标的标记为任何字符、图形、标志或三维形状或颜色，或前述要素的任何组合；声音，或政令中指定的，从事商品生产、认证或转让业务

的人使用的其他要素，或从事服务提供或认证业务的人使用的其他要素。商标可以在日本专利局注册。注册商标自注册之日起有效期为10年（如注册续展，有效期可以延长）。

外观设计：
《外观设计法》（1959年4月13日第125号法案，修订至今）管辖日本的注册外观设计事宜。可注册的外观设计是物品的任何形状、图案或颜色，或前述要素的任何组合，可通过眼睛产生审美印象，具有新颖性、工业实用性和创造性。与先前申请注册的外观设计相同或相似的外观设计不得注册。外观设计可以在日本专利局注册。外观设计注册自申请日起25年有效。未注册的外观设计可受《反不正当竞争法》（1993年5月19日第47号法案，修订至今）的保护。

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《版权法》（1970年5月6日第48号法案，修订至今）管辖日本的版权事宜。根据《版权法》，作品符合条件的作者无需注册即可享有某些权利。作品是指在文学、学术、艺术或音乐领域之思想或情感的创造性表达。可自愿注册，但并不常用。符合版权要求的作品在作者去世后70年内受保护。

17. 您所处司法管辖区是否有管理数据隐私的法律法规？

有。《个人信息保护法》（2003年5月30日第57号法案，修订至今）及据此颁布的各种指南（统称“个人信息保护法”）是日本有关数据保护的主要法律。许多人认为个人信息保护法的要求与欧洲通用数据保护条例一样严格。个人信息保护法修正案于2020年6月5日颁布，计划于2022年4月1日全面生效。该修正案改变了个人信息保护法中与（a）个人权利，（b）企业责任，（c）数据利用措施，（d）处罚以及（e）跨境转移和域外使用相关的条款。以下关于个人信息保护法的介绍包含个人信息保护法2022年修正案的内容。

个人信息保护法适用于业务过程中使用的三类信息和数据，每类信息和数据均受不同规则的约束：（a）个人信息（广义上包括单独与其他数据结合使用可识别在世个人的任何信息），（b）个人数据（个人信息数据库中包含的个人信息），（c）保留的个人数据（处理个人信息的经营者有权向第三方披露、更正、添加或删除、删除或停止提供的个人数据）。

一般来说：

1. 对于个人信息，“处理个人信息的经营者”（是指使用个人信息数据库进行业务的人）必须尽可能指定其处理的个人信息的用途，并且必须遵守以下规则：
(a) 经营者不得将个人信息的使用范围超出实现目的所需的范围（除非获得个人的同意），并且（b）实际使用不得超出与原始使用目的有合理实质关系的范围；
2. 对于个人数据，处理个人信息的经营者（a）不得通过欺骗或其他不正当手段获取个人信息，并且（b）在获取个人信息时，必须通知个人或公开宣布使用目的（除非列举的例外情况适用）；以及
3. 对于保留的个人数据，处理个人信息的经营者必须采取必要和适当的措施，防止个人信息泄露、丢失或损坏，并对个人信息进行其他安全控制，并且在不再需要使用个人信息时，尽力及时删除个人信息。

个人信息保护法还普遍规定，处理个人信息的经营者在未获得个人事先同意的情况下，不得向第三方提供个人信息。“第三方”是指除处理个人信息的经营者以外，收到个人信息的任何人（包括关联方）。上述规则存在重大例外情况，允许在未获得个人事先同意的情况下向第三方提供个人数据，例外情况包括已向个人提供通知和某些详细信息，个人数据因合并、收购或类似继承交易而转移，或个人数据被传输给完全代表处理个人信息经营者处理个人数据的第三方服务提供商。

18. 您所处司法管辖区是否有激励措施吸引外国公司？

日本政府为吸引外国公司来日采取了各种激励措施，包括为在当地开设或扩大总部职能的公司提供的税收激励措施、关于特区的激励措施、基于《产业竞争力强化法》的激励措施、基于《提高生产率特别措施法》的激励措施、基于《区域未来投资促进法》的税收扣减制度、研发税收激励措施等。

除中央政府的激励措施外，许多地方政府（都道府县和市）也采取各自独特的激励措施，以促进对各自地区的投资。

19. 您所处司法管辖区的企业破产法是什么？

企业破产的法院程序大致分为清算程序和重组

程序。清算程序包括受《破产法》（2004年6月2日第75号法案，修订至今）管辖的破产程序（类似于第7章的美国程序），以及受《公司法》管辖的特殊清算程序。重组程序包括受《民事再生法》（1999年12月22日第225号法案，修订至今）管辖的民事再生程序和受《企业重组法》（2002年12月13日第154号法案，修订至今）管辖的企业重组程序。

20. 最近是否有改革或监管变革提案会影响您所处司法管辖区的公司法？

2019年12月修订了《公司法》（“修订法案”）。大部分修订于2021年3月1日生效，其余将于2023年6月前生效。

修订法案涉及各种企业治理变革，如（a）要求上市公司任命至少一名外部董事（尽管根据上市条例，在东京证券交易所交易的大多数公司已经至少有一名外部董事，但修订法案旨在通过调整日本公司法来加强企业治理），（b）迫使公司在股东大会上解释公司关于董事薪酬方案的政策，（c）允许公司在未经股东事先同意的情况下通过互联网向股东分发股东会材料，以及（d）允许公司将单个股东的股东提案数量限制为10份。

《企业治理准则》修正案生效，通过创建新的细分市场（如下所述），鼓励上市公司（i）将独立董事人数从至少两名增加到至少三分之一，增强董事会的独立性，（ii）任命更多女性、非日本人和职业中期专业人士，促进高级管理层的多样性，（iii）制定并披露可持续性和ESG计划，以及（iv）使用电子投票平台并以英语发布定期报告。

2022年4月4日，东京证券交易所运营的现有五个股票市场板块（包括一部，通常由大公司组成的加速市场，以及二部，Mothers、JASDAQ Standard和JASDAQ Growth）将重组为三个新的市场：优质市场、标准市场和成长型市场。要在优质市场（主板）上市，公司须采取经修订的《企业治理准则》（如上所述）中所述的各种措施来加强企业治理体系。预计此次市场结构改革将促进上市公司的可持续增长和中长期企业价值，并吸引更多元化的全球机构和国内投资者。

21. 您所处司法管辖区或亚洲的公司法是否有任何特点需要强调？

《公司法》的一个独特之处是公司审计师制度（“kansayaku”）。公司审计师监督董事履行职责。为此，公司审计师有权从董事和员工处获取有关业务的报告，并进一步调查公司的

业务和财务状况。公司审计师的任期通常在任命之日起四年内结束的最后一个营业年度的股东大会结束时届满。有股份转让限制的公司可在公司章程中规定将该期限延长至最多十年。

22. 从当前看，公司法已实施了哪些变革？在您所处司法管辖区，公司法方面是否有应注意的“新常态”实用提示？

由于新冠疫情的出现，推动了日本企业经营方式的现代化。日本公司传统上使用“纸印文化”来约束协议，这现在被认为是生产力的障碍。根据《电子签名和认证业务法》（2000年5月31日第102号法案），日本承认电子签名是有效的合法签名形式。然而，对于法律是否允许供应商所提供的通用电子签名方法存在不确定性。因此，尽管该法颁布已有20年，但在日本公司中使用电子签名的情况并不常见。不过，2020年9月，日本政府发布公告称日本现有最常见的电子签名方法可创建有效的法定签名形式。由于新冠疫情导致的远程办公方式的持续时间将超出一般预期，此公告加快了在日本运营的公司采用电子签名的步伐（但提交给日本政府机构的许多文件仍需要原始签名）。

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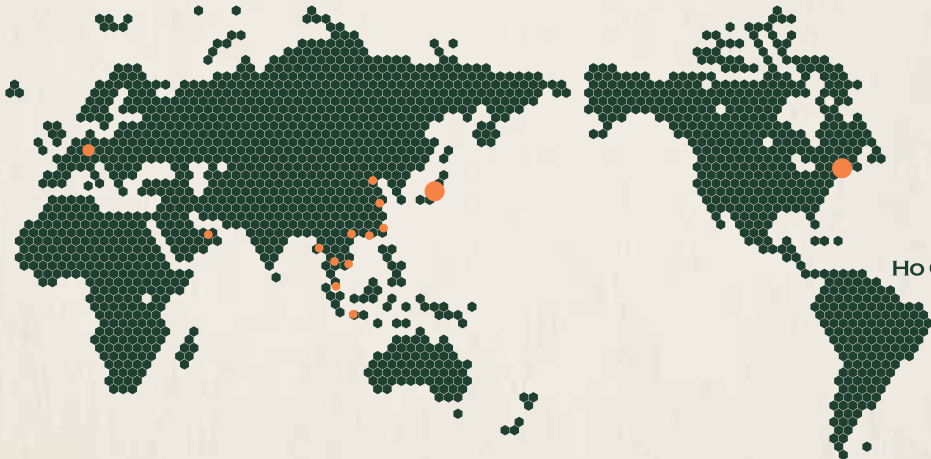
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