

LexisNexis® Company, M&A and Employment Law Guide 2024

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



LexisNexis® Company, M&A and Employment Law Guide 2024

This is the annual complimentary guide combining the Company Law Guide, M&A Law Guide and Employment Law Guide

Jurisdictional Q&As

Contents

Company Law

Jurisdictional Q&As:	Page
Japan - Nishimura & Asahi	9
Vietnam - VB Law	23

M&A Law

Jurisdictional Q&As:	Page
India - Shardul Amarchand Mangaldas & Co	38
Vietnam - VB Law	46

Employment

Jurisdictional Q&As:	Page
Japan - Iwata Godo Law Offices	68
Vietnam - VB Law	80

Jurisdiction: JAPAN

Firm: **Nishimura & Asahi (Gaikokuho Kyodo Jigyō)**

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

**NISHIMURA
& ASAHI**

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

Japan's Companies Act (Act No 86 of 26 July 2005, as amended to date), along with its subordinate regulations (collectively "Companies Act"), governs 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.

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

A *kabushiki-kaisha* ("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 US 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 Directors, 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).

3. 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 authorised shares, the types and numbers of the outstanding shares, the rules on the limitation of share transfer (if applicable), the name of the directors, the name and address of the representative directors, 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 employees.

4. How long does it take to set up a company in your jurisdiction? Are there any ways to speed up the entire process?

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 (ie no fax or scans) for documentation submitted to the Legal Affairs Bureau; all documentation is in the Japanese language; and certain documents must be notarised (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 post-registration reporting requirements for companies in your jurisdiction (eg annual reporting requirements and documents filing)?

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.

6. How to set up foreign companies in your jurisdiction?

There is no formation process specialised for a foreign owned entity in Japan (wholly or in part). See Questions 2 and 4 for information about the company formation process in Japan.

In addition to setting up a subsidiary, a foreign company wishing to engage in business operations in Japan can also elect to establish a branch office in Japan. Establishing a branch office is the simplest way for a foreign company to establish a base for business operations and engage in continuous transactions in Japan. A branch office of a foreign company should be registered with the Legal Affairs Bureau. A branch office does not have its own legal corporate status. It is deemed to be encompassed within the corporate status of the



Katsuyuki Yamaguchi
NY LLP Partner | Managing Partner (New York)

Email: k.yamaguchi@nishimura.com

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. (2015-2023)
- Statutory Auditor, Hakuodo DY Holdings Inc. (2015-2023)
- Outside Director (Audit and Supervisory Committee), BrainPad Inc. (2021-2023)
- Statutory Auditor, BrainPad Inc. (2013-2020)
- 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>>

ABOUT AUTHOR

Representative Publications

<<English publications only>>

- The Legal 500: Corporate Governance Comparative Guide (Japan Chapter) (2019, 2020, 2022, 2023)
- Corporate Governance and Directors' Duties (Japan Chapter) (Overview 2022/23)
- LexisNexis Company, M&A and Employment Law Guide 2023 (Japan Chapter) (Company Law Jurisdictional Q&As)
- LexisNexis Company, Foreign Investment and M&A Law Guide 2022 (Company Law Jurisdictional Q&As: Japan)
- LexisNexis Company Law Guide 2021 (Japan Chapter) (2021)
- 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 (2007-2022)
- Best Lawyers (2013-2023)
- ALB Japan Law Awards 2017
- The American Lawyer Global Legal Awards 2017

Languages

Japanese, English

foreign company, and therefore such foreign company is ultimately responsible for all debts and credits generated by the activities of its Japanese branch office (which is the reason few companies engaging in substantial business operations in Japan operate through a branch structure). A Japanese branch office of the foreign company, however, may open bank accounts and lease real estate under its own name as a Japanese branch office of the foreign company.

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: (i) one share or more of a private company; or (ii) 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: (i) 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 (ii) the transfer or cessation of a Regulated Business Segment if the proposal is made by the foreign investor.

8. 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, 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.

9. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction? What are the key challenges for directors during the pandemic?

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 (ie directors must manage the business with the care of a good manager);

- b) duty of loyalty (ie directors must perform their duties for the company in a loyal manner);
- c) duty to monitor (ie directors must monitor the performance of other directors, including the Representative Directors); and
- d) duty to establish a risk management system (ie 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 (eg 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 (ie a derivative claim).

One of key challenges during the pandemic for directors from a corporate governance perspective was the difficulty to hold shareholders' meetings in-person in consideration for the prevention of the spread of COVID-19. Before the COVID-19 pandemic, it was generally understood in Japan that holding a shareholders' meeting on a virtual basis only was not permitted (though the possibility of holding a virtual meeting was a topic of interest). The COVID-19 pandemic accelerated discussions on the ability to hold virtual shareholders' meetings, and the Industrial Competitiveness Enhancement Act was amended on 16 June 2021 to add provisions that supersede the Companies Act in order to permit a listed company to hold a shareholders' meeting on a virtual basis only (subject to certain conditions).

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

A Japanese company can be owned by one shareholder (if organised as a KK) or one member (if organised 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 individuals to serve as executive officers and perform the duties of the managing member. An executive officer does not need to be an employee of the member.

11. 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 (ie 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 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 50 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.

12. What is the corporate governance regime in your jurisdiction?

As explained in Question 1, 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

ABOUT AUTHOR



Stephen D. Bohrer
Partner

Email: s.bohrer@nishimura.com

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 35 articles written on Japanese law
For full list of publications, please see below:
<https://www.nishimura.com/en/attorney/0081.html>

Languages

English

are two important codes that work in tandem to encourage better corporate governance by listed companies in Japan:

- a) The Corporate Governance Code, which was introduced by the Tokyo Stock Exchange in 2015 (and revised in 2018 and 2021), stipulates important corporate governance principles for all companies listed on securities exchanges in Japan. The latest revision to the Corporate Governance Code (which became effective on 11 June 2021 and enhances various corporate governance requirements) was made in tandem with the restructuring of the Tokyo Stock Exchange, in which the total market segments of the exchange was reduced from five to three, with one segment being referred to as the “Prime Market” (the segment available only to those companies that achieve a higher level of corporate governance as required under the recently revised Corporate Governance Code). An aim of the latest revision to the Corporate Governance Code and the restructuring of the Tokyo Stock Exchange is to attract investments by global institutional investors in Japanese listed companies. See question 20 for further information about this restructuring of the Tokyo Stock Exchange.
- b) The Stewardship Code, which was introduced by the FSA in 2014 (and revised in 2017 and 2020), serves as a principle-based guide for institutional investors to promote sustainable growth of investee companies and enhance the medium- and long-term investment return for clients and beneficiaries.

13. What are the accounting and auditing standards companies must adhere to?

Japanese companies can prepare their financial statements using any of the following accounting standards: (i) J-GAAP; (ii) US-GAAP; (iii) IFRS; or (iv) Japan’s Modified International Standards (JMIS), which is the adjusted version of IFRS for Japan. Most Japanese companies prepare their financial statements under J-GAAP. However, there is a growing trend for Japanese publicly traded companies to use IFRS. As of 30 June 2023, among the 3,807 companies listed on the Tokyo Stock Exchange, 274 companies have adopted (or are planning to adopt) IFRS. Audits undertaken by certified public accountants

for Japanese companies must be performed in accordance with auditing standards generally accepted in Japan (Japanese GAAS).

14. What changes in company law have been implemented in the 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 modernise 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 recognised e-signatures as a valid legal form of signature under the Act on Electronic Signatures and Certification Business (Act No 102 of 31 May 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 has been continuing 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).

15. 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 (eg 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.

16. 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 varies 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.

17. 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 14 April 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 monopolisation 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.

18. 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?

The two principal sources of employment law in Japan are the Labor Standards Act (Act No 49 of 7 April 1947, as amended to date) and its Enforcement Ordinance (Ordinance of the Ministry of Health and Welfare, No 23 of 30 August 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 Directors 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.

19. 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 13 April 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 13 April 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 colour, 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 13 April 1959, as amended to date) governs registered design matters in Japan. Designs that can be registered are any shape, pattern or colour, 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 19 May 1993, as amended to date).

Copyright

The Copyright Act (Act No 48 of 6 May 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.

20. How is data privacy protection regulated in your jurisdiction?

The Act on the Protection of Personal Information (Act No 57 of 30 May 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 became fully effective on 1 April 2022. This amendment changed portions of the APPI relating to: (i) individual rights; (ii) responsibilities of businesses; (iii) measures concerning the utilisation of data; (iv) penalties; and (v) 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: (i) personal information (which is broadly defined to include any information that alone or in combination with other data can identify a living individual); (ii) personal data (personal information contained within a personal information database); and (iii) 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:

- a) 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: (i) a business operator must not use the personal information

ABOUT AUTHOR



Yusuke Urano
NY LLP Partner

Email: y.urano@nishimura.com

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, M&A and Employment Law Guide 2023 (Company Law Jurisdictional Q&As: Japan Chapter)" (LexisNexis) (January, 2023)
- "Company and Foreign Investment Law Guide 2022 (Company Law Jurisdictional Q&As: Japan Chapter)" (LexisNexis) (December, 2021)
- "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

- beyond the scope necessary to achieve the purpose (unless the individual's consent is obtained); and (ii) must not change the purpose of use beyond a scope that has a reasonably substantial relationship with the original purpose of use;
- b) for personal data, a business operator handling personal information must:
- (i) not acquire personal information by deception or other wrongful means; and
 - (ii) upon acquisition, it must notify the individual of or publicly announce the purpose of use (unless an enumerated

- exception applies); and
- c) 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 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.

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

Court procedures for corporate insolvency are roughly categorised into liquidation procedures and restructuring procedures. Liquidation procedures include bankruptcy proceedings governed by the Bankruptcy Act (Act No 75 of 2 June 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 22 December 1999, as amended to date) and corporate reorganisation proceedings governed by the Corporate Reorganization Act (Act No 154 of 13 December 2002, as amended to date).

22. Are there any major reforms in the company law regime and corporate governance in your jurisdiction?

The Companies Act was amended in December 2019 ("**Amended Act**"), and the amended Companies Act became effective on 1 March 2021 (other than the amendment discussed in paragraph 3 below, which became effective on 1 September 2022).

The Amended Act includes various corporate governance changes, such as (i) 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); (ii) compelling a company to explain the company's policy on its directors' compensation scheme at a shareholders' meeting; (iii) 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 (iv) permitting companies to limit the number of shareholder proposals per single shareholder to 10.

Apart from the Companies Act, on 11 June 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.

23. 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 10 years by stipulating so in its articles of incorporation.

ABOUT THE AUTHORS

Katsuyuki Yamaguchi

NY LLP Partner | Managing Partner (New York)

E: kyamaguchi@nishimura.com

Stephen D. Bohrer

Partner

E: s.bohrer@nishimura.com

Yusuke Urano

NY LLP Partner

E: yurano@nishimura.com

ABOUT THE FIRM

Nishimura & Asahi (Gaikokuho Kyodo Jigyo)

W: <https://www.nishimura.com/en>

A: Otemon Tower, 1-1-2 Otemachi,
Chiyoda-ku, Tokyo 100-8124, Japan

T: +81 3 6250 6200

F: +81 3 6250 7200

Nishimura & Asahi is Japan's largest full-service international law firm, with more than 800 professionals* working in close collaboration at 20 offices around the world to offer unrivaled one-stop legal services.

Our fundamental mission is to realize an affluent and fair society based on the rule of law. Committed to "Leading You Forward," we aim to contribute to the growth of our clients and our society.

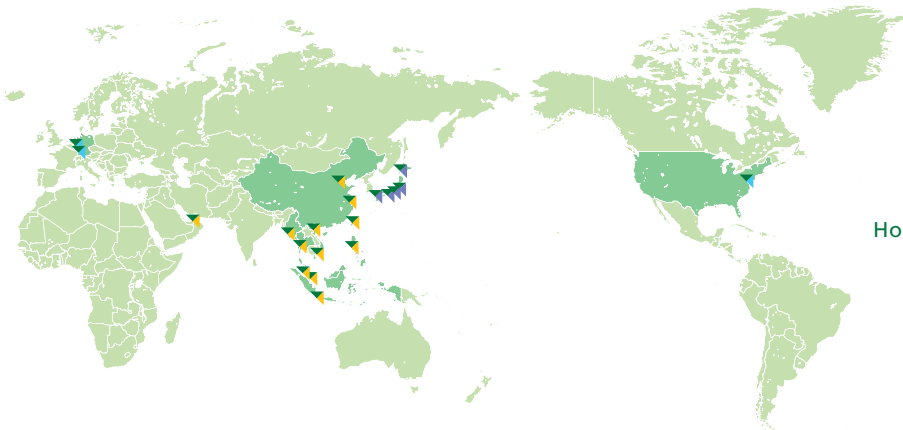
We were named "Japan Law Firm of the Year" for the fourth straight year at ALB Japan Law Awards (2019 - 2022).

Professionals*

800+

Offices

20+



- Tokyo
- Osaka
- Nagoya
- Fukuoka
- Sapporo
- Bangkok
- Beijing
- Shanghai
- Dubai
- Frankfurt
- Düsseldorf
- Hanoi
- Ho Chi Minh City
- Jakarta
- Kuala Lumpur
- Manila
- New York
- Singapore
- Taipei
- Yangon

*Including some Associate and Alliance offices

Company, M&A and Employment Law Guide 2024

from LexisNexis®

The LexisNexis® Company, M&A and Employment Law Guide 2024 provides you with a detailed review and analysis of the current legislation and regulations that govern company, M&A and employment practices around the world with a focus on the Asia-Pacific region.

The guide helps you understand company, M&A and employment practices in unfamiliar jurisdictions through Q&A style chapters that can be easily compared with other jurisdictions.

[lexisnexis.com.hk](https://www.lexisnexis.com.hk)

LexisNexis, Lexis and the Knowledge Burst logo are registered trademarks of RELX Inc., used under licence. Copyright 2023 LexisNexis, a division of RELX (Greater China) Limited. All rights reserved.

