

# Japan



Hideaki Ozawa



Ryoji Moroi

Nishimura & Asahi

## 1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in Japan. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

In Japan, it is mainly the Civil Code that governs real estate transactions. Real estate property rights are subject to the law of property rights in Book 2 of the Civil Code. This law regulates ownership, joint ownership, assignment and other relevant matters. Real estate contract transactions are subject to the law of contracts in Book 3 of the Civil Code. This law regulates the formation of contracts, the right and duties of the parties and other relevant matters.

Other laws relevant to real estate:

### 1 The Commercial Code

The Commercial Code has several provisions on real estate transactions between companies.

### 2 The Land Lease and House Lease Law

The Land Lease and House Lease Law governs the relationship between the landlord and the tenant. This law applies to leases of business premises, as well as residential premises.

### 3 The Law of Real Estate Registration

The Law of Real Estate Registration governs the registration process of real estate.

### 4 The Law for Condominiums (*Kubunshoyuho*)

The Law for Condominiums governs the relationship between unit owners of a building.

### 5 The Real Estate Transactions Business Law (*Takuchitatemonorihikigyoho*)

The Real Estate Transactions Business Law governs the brokerage real estate business.

### 6 The Building Standard Law

The Building Standard Law provides standards concerning the construction of buildings.

### 7 The City Planning Law

The City Planning Law regulates land development and zonings.

### 8 Financial Instruments and Exchange Law

The trust beneficial interests under a property trust agreement by which real estate is entrusted to a property trustee are recognised as securities under the Financial Instruments and Exchange Law and, accordingly, the Financial Instruments and Exchange Law governs the transactions of such trust beneficial interests.

- 1.2 What is the impact (if any) on real estate of local common law in Japan?**

Under the Constitution, local governments are authorised to enact local regulations within the scope of the law, and some of these local regulations substantially affect the use of land.

- 1.3 Are international laws relevant to real estate in Japan? Please ignore EU legislation enacted locally in EU countries.**

There are no international laws relevant to real estate in Japan in any material respect.

## 2 Ownership

- 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

In general, there are no legal restrictions on the ownership of real estate by particular classes of persons. However, it should be noted that under the Foreign Exchange and Foreign Trade Law, non-residents are, in certain cases, required to report real estate transactions to the relevant governmental entity after such non-residents have acquired real estate.

## 3 Real Estate Rights

- 3.1 What are the types of rights over land recognised in Japan? Are any of them purely contractual between the parties?**

### Ownership

Under Japanese law, land and buildings are considered to be separate and independent real properties and ownership of land and the building which stands on such land can belong to different persons. Accordingly, if A owns land and B owns a building on the land, it is necessary that B lease the land or obtain the superficies (see below) in order to secure his ownership of the building. If B leases the land, this lease is called a land lease.

Ownership is defined as a right to use, make a profit from and dispose of real estate under the Civil Code. Ownership is categorised as a real right. A “real right (*bukken*)” is a right that a person has over a thing and is distinguished from a “right arising out of obligational relationships (*saiken*)”, which arises out of the

relationships between persons. Real rights can be claimed against any other persons after their perfection by registration; hence, in this regard, ownership is not purely contractual.

Under Japanese law, ownership can be held by several persons. Such ownership is called joint ownership (*kyoyu*) and is subject to the Civil Code. Unit ownership (*kubunshoyu*) of a building under condominium ownership is subject to the Law for Condominiums as well as the Civil Code.

Other property rights to use another person's real estate:

#### 1 Superficies (*Chijyoken*)

Superficies is a property right to use another person's land for the purpose of the buildings and other structures thereon. Superficies can be created for installations underground or above the land. Superficies is not purely contractual due to its character as a property right.

#### 2 Servitudes (*Chiekiken*)

Servitudes is defined as a property right to use another person's land for the convenience and benefit of one's own land (e.g. right of way). Servitude is not purely contractual due to its character as a property right as well.

Leases:

#### 1 Lease with rents (*Chintaishaku*)

A lease is categorised as a contractual right and obligation under the Civil Code. However, under the Land Lease and House Lease Law: (i) a tenant of the land who owns a registered building on the land may assert his right against a new owner of the land; and (ii) a tenant of the building who was given possession of the building may assert his right against a new owner of the building. Hence, in practice, a lease is not purely contractual.

#### 2 Lease without consideration (*Shiyotaishaku*)

The Land Lease and House Lease Law does not apply to leases without consideration. Hence, under a lease without consideration, a lessee can only make claims against the lessor.

### 3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?

As described in question 3.1 above, land and buildings are considered to be separate and independent real properties, and therefore, to be accurate, the right to the plot of land does not diverge from the right to a building constructed thereon. However, it is considered that a lessee who leases a building can use the site as well in such a manner as needed for the normal use of the building without a specific lease or superficies for the site. This right of a lessee of a building originates from the right of the lessor of the building to use the site. In that context, we can say that there is a scenario where the right to the plot of land diverges from the right to a building constructed thereon.

## 4 System of Registration

### 4.1 Is all land in Japan required to be registered? What land (or rights) are unregistered?

Almost all land is already registered except for government property. With regard to buildings, buildings are required to be registered under the Law of Real Estate Registration but in practice some buildings remain unregistered until it becomes necessary to perfect the ownership against a third party (e.g. at the time of the purchase of the building).

### 4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title. However, under case law, any interests which are registered are deemed to be true and the burden of proof is imposed on the party who argues that the registered interests are null and void.

### 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

No rights over land are compulsorily registrable. It should be noted that real estate transactions take effect upon the mutual agreement of the parties and no formalities, including registration, are required. However, the holder of a real estate interest cannot assert its interest in real estate against third parties if such interest is not registered. Therefore, in practice, interests in real estate are likely to be registered.

### 4.4 What rights in land are not required to be registered?

See the answer to question 4.3 above.

### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period following first registration and there are no different classes of title on first registration.

### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Ownership is transferred to the buyer in accordance with the contract. In practice, sale and purchase agreements normally provide that ownership is transferred to the buyer once the buyer makes full payment of the purchase price.

### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

No real estate interest (except for a building lease interest, which can be perfected by delivery, and certain liens) can be perfected without registration. Namely, no real estate interest has priority until it has been registered over any real estate interests created on the real estate. Further, priority among registered real estate encumbrances (e.g. mortgages) is determined, in general, by the order in which they were registered. Earlier registered encumbrances have priority over later registered encumbrances.

## 5 The Registry / Registries

### 5.1 How many land registries operate in Japan? If more than one please specify their differing rules and requirements.

One real estate registry, called the Legal Affairs Bureau, operates in Japan.

## 5.2 Does the land registry issue a physical title document to the owners of registered real estate?

Yes, the Land Registry issues a physical title document to the owners of registered real estate.

## 5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Legally, transactions relating to registered real estate can be completed electronically. However, please note that, in reality, in many cases the transaction cannot be completed electronically because many documents necessary for registration have not yet been digitised.

When the ownership of real estate is transferred by sale and purchase, in order to apply for the registration of the transfer of the ownership of the real estate in writing instead of online application, the following are required: (i) information certifying the cause of registration (*toki gennin shomei jouhou*), such as the sale and purchase agreement or the document summarising the necessary information; (ii) information for registration identification (*touki shikibetsu jouhou*) or a title document of the seller; (iii) a certificate of a seal impression of the seller; (iv) a residence certificate of the buyer (if the buyer is a corporate entity, a certified copy of commercial registration); and (v) a power of attorney from each of the seller and buyer (if they are a corporate entity, certificates of qualifications are also necessary). When the application for the registration is made electronically (i.e., online application), (iii), (iv) and (v) can be replaced by the electronic certificates.

Almost all information on ownership of registered real estate can be accessed electronically.

## 5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Under the State Compensation Law, compensation can be claimed from the registry if the relevant officials make a mistake in the course of registration, either negligently or intentionally.

## 5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

There are no restrictions on public access to the registry. However, it should be noted that one should examine written agreements in order to obtain all of the information one might need because the details of interests over real estate, including leases or mortgages, do not necessarily fall within the scope of registrable matters.

## 6 Real Estate Market

### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Japan? Please briefly describe their roles and/or duties.

#### a) Selling and purchasing agents (or realtors)

The real estate broker, named "*takuchitatemono-torihikigyosha*",

would normally be involved in real estate transactions in Japan. He makes it his business to act as: (i) an intermediary between the seller and buyer; or (ii) an agent of the seller or buyer. Governmental approval is required to engage in such business as a broker. A real estate broker owes a duty of care to his buyer or seller client under the Real Estate Transactions Business Law, including, without limitations, the duty to disclose important information about the subject property. It should be noted that a real estate broker may work for both his buyer client and his seller client simultaneously when he acts as an intermediary and that, in such cases, he may receive fees from both parties.

#### b) Lawyers

Lawyers would normally be involved in real estate transactions which are complicated and sizable in amount.

#### c) Notaries

It is unusual for notaries to be involved in real estate transactions.

#### d) Others

Judicial Scriveners (*shihoushosi*) are involved in almost all real estate transactions. They are professionals of the registry and it is commonly understood that one cannot complete the registration process without their involvement.

## 6.2 How and on what basis are these persons remunerated?

The upper limit of compensation for a real estate broker is: (i) 6% of the amount of a transaction if he acts as an agent; and (ii) 3% of the amount of a transaction if he acts as an intermediary under the Real Estate Transactions Business Law. In the case of (ii), he can be compensated by both the seller and the buyer if both are his clients, hence compensation may amount to 6%.

With regard to other persons, it depends on the person as to how and on what basis they are remunerated.

### 6.3 How has the real estate market in Japan recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? What were the most important real estate transactions in Japan in the past year? Please include both local and international investors in your answer.

After the global credit crunch in September 2008 and the ensuing worldwide recession, international investors began to withdraw their funds from the Japanese real estate securitisation market. Domestic investors have also invested their funds cautiously since then. These events led to a decrease in the volume of transactions in securitised real estate and, moreover, the bankruptcy of some real estate investment corporations in Japan. In addition, because of this recession, the number of transactions in real estate itself also decreased by 15 to 30% although a gradual recovery trend began after 2009. On the other hand, after the recession, the rental market for office buildings has continued to be depressed and, especially in the centre of Tokyo, the average rent in June 2012 declined by 26.7% compared with June 2008, and the rate of vacancy in June 2012 has risen to 9.4% compared to 3.5% in June 2008. The rate of vacancy is now in gradual decline, especially in the centre of Tokyo.

One of the biggest transactions in the past year was the acquisition of 15 Japanese warehouses held by LaSalle Investment Management for 122.6 billion yen (\$1.6 billion) through a 50:50 joint venture owned by Global Logistic Properties Ltd., a unit of the Government of Singapore Investment Corp., and China Investment Corporation in December 2011.

**6.4 Is there a trend in Japan towards the investment in retirement homes / nursing homes due to the increased ageing of the population?**

There have been some cases where investment corporations invested in retirement homes/nursing homes in Japan in the past. However, there is not a clear trend in Japan towards the investment in these due to the increased ageing of the population.

**7 Liabilities of Buyers and Sellers in Real Estate Transactions**

**7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?**

The transfer of real estate takes effect upon the mutual agreement of the parties and no formalities are needed.

**7.2 Is the seller under a duty of disclosure? What matters must be disclosed?**

In general, the seller is not under a duty of disclosure. However, it should be noted that, under the Civil Code, the seller is liable for any latent defects, latent encumbrances and loss of ownership (hereinafter collectively referred to as the “Defects”), even if there are no warranties to cover the Defects. The buyer may seek damages for the Defects and if, as a result of the Defects, the buyer cannot attain the purpose for which he purchased the property, he may also cancel the agreement. In the event that the real estate broker is involved in real estate transactions, such real estate broker shall provide certain material information of real estate in writing to the buyer under the Real Estate Transactions Business Law.

**7.3 Can the seller be liable to the buyer for misrepresentation?**

If the seller induces the buyer to enter into a real estate transaction by fraudulent misrepresentation, the buyer may cancel such transaction and/or seek damages under the Civil Code.

**7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?**

As we mentioned in question 7.2, the seller is liable for the Defects even if there are no warranties to cover the Defects. Hence, in practice, warranties normally cover those matters about which the buyer has special concerns. The seller is liable for any misrepresentation. It depends on the parties as to whether warranties are a substitute for the buyer carrying out his own due diligence.

**7.5 Does the seller warrant its ownership in any way? Please give details.**

As we mentioned in question 7.2, the seller is liable for the Defects or loss of ownership even if this is not expressly provided for in the agreement.

**7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?**

In general, the buyer has no liabilities in addition to paying the sale price.

**8 Finance and Banking**

**8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?**

In general, under the Money Lending Business Law (*kashikingyoho*), a grant from the relevant governmental authorities must be obtained in order to engage in the money lending business, including the lending of money to finance real estate. However, there are no regulations concerning the lending of money specifically to finance real estate.

**8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?**

The main method is a mortgage on the real estate under the Civil Code. The base mortgage (*neteito*) is also a popular method of protecting a lender from default by the borrower. The base mortgage secures the unspecified obligation of the borrower; however, the amount to be secured under the base mortgage is limited to the specified amount (*kyokudogaku*) prescribed under the mortgage agreement.

**8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?**

There are two types of proceedings for the realisation of mortgaged properties.

One way is a foreclosure (*keibai*) whereby the mortgagee can collect receivables secured by the mortgage from the proceeds of sale of the mortgaged properties through a legal process involving court proceedings. The contribution of the mortgagor is not necessary for the foreclosure. As those who would like to buy mortgaged properties cannot investigate the property (especially inside the building as to whether there is an unlawful occupant) and have no choice but to depend on a simple report on the properties prepared by a court execution officer, they cannot judge the value of the properties (including the risk associated with them) accurately. Therefore, the sale price at an auction tends to be lower than the actual market price.

The second way is a voluntary sale (*nin-i baikyaku*), whereby a mortgagee can call in the receivable from the proceeds of the sale of the mortgaged properties without involving court proceedings. A mortgagor can sell the properties at a price close to the market price. The contribution of the mortgagor is indispensable for this process. Voluntary sales are more advantageous to both mortgagee and mortgagor than foreclosures in the light of cost, number of days necessary for the realisation and the amount of the proceeds of the sale, and therefore, voluntary sales are commonly used.

Furthermore, without taking the above procedures, mortgagees can collect their receivable by seizing the rental income of the mortgaged properties at very low expense (*butsujo daii*). However,

as the mortgagees do not have the right to manage the mortgaged properties, if the mortgagor abandons the administration of the properties, it may be difficult for the mortgagee to collect the rent. There is also another way to execute against earnings from the property. That is, upon receiving an allegation from the mortgagee, a manager can be appointed by the court to manage the properties under compulsion, and the mortgagee can collect receivables from the earnings (*shu-eki shikkou*). However, this procedure is not used often due to its high cost of management.

#### 8.4 What minimum formalities are required for real estate lending?

Theoretically, no formalities are required for real estate lending; however, in practice, a written form is usually used in real estate lending transactions.

#### 8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

A real estate lender is protected from such claims by the registration of the mortgage. As we mentioned in question 4.3, the lender can assert its mortgage interest on the real estate against third parties, including other creditors' interests over such real estate, if the mortgage is registered. It should be noted that the priority of the various mortgages on the real estate is based on the order of registration.

In the process of a borrower's bankruptcy proceedings, a lender may assert its mortgage against the trustee and other creditors. However, in the process of a borrower's company reorganisation (*kaishakosei*), a lender's mortgage may be modified in accordance with the adopted reorganisation plan.

## 9 Tax

#### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The seller is an individual:

##### 1 Income tax and Individual inhabitant tax

If the seller is an individual, income tax and individual inhabitant tax is levied on the seller. The tax base of the income tax is broken into two categories: the long-term capital gain; and the short-term capital gain. The long-term capital gain is derived from real estate owned for more than five years and the short-term capital gain is any capital gain other than the long-term capital gain. In the case of the long-term capital gain, the tax rate is 20% (15% income tax and 5% individual inhabitant tax). In the case of the short-term capital gain, the tax rate is 39% (30% income tax and 9% individual inhabitant tax).

##### 2 Stamp tax

A stamp tax is levied on the parties to the contract. This tax can be up to 600,000 yen.

##### 3 Registration and licence tax

A registration and licence tax is levied on the applicant for registration. This tax rate is 2% of the tax base of the value as recorded in the tax rolls (approximately 70% of the market value if the property is land). It should be noted that a tax rate of 1.3% shall apply to the applicant for registration in relation to a transfer of land which occurs between April 1, 2011 and March 31, 2012, and 1.5% shall apply to the applicant for registration in relation to a transfer of land which occurs between April 1, 2012 and March 31, 2013.

#### 4 Real property acquisition tax

A real property acquisition tax is levied on the person acquiring the subject property. This tax rate is 4% of the tax base of the value as recorded in the tax rolls.

The seller is a corporation:

##### 1 Corporation tax, Corporate inhabitant tax and Enterprise tax

Corporation taxes, corporate inhabitant taxes and enterprise taxes are levied on net income. The total amount of these tax rates is about 40%.

##### 2 Stamp tax, Registration and licence tax, and Real property acquisition tax

A stamp tax, registration and licence tax, and real property acquisition tax, as we mentioned above, may also apply to the transfer of real estate.

#### 9.2 When is the transfer tax paid?

Income taxes and individual inhabitant taxes become due on March 15 of the year following the transfer of the real asset.

Corporation taxes, corporate inhabitant taxes and enterprise taxes become due within two months after the end of the corporation's business year.

The stamp tax is paid by affixing a stamp on the documents. Such stamps are sold in post offices. The registration and licence tax is paid on the occasion of an entry. The real property acquisition tax is paid after the transfer by the date specified by the tax bureau.

#### 9.3 Are transfers of real estate by individuals subject to income tax?

See the answer to question 9.1 above.

#### 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

A consumption tax is applied to the transfer of the ownership of a building. The tax rate is 5% (4% national consumption tax and 1% local consumption tax). A taxpayer is an enterprise which transfers taxable assets; however, the tax amount is normally added to the price of the assets and is ultimately borne by consumers. The transfer of land is not taxable and the lease of residential buildings and land is not taxable.

#### 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

As we mentioned in question 9.1, the income tax, individual inhabitant tax, corporation tax, corporate inhabitant tax and enterprise tax may be payable by the seller on the disposal of a property. A registration and licence tax is payable by the seller and the buyer under the law. However, it should be noted that the parties always agree in practice that such tax be borne fully by the buyer.

#### 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Theoretically, there is no difference. If the ownership of a company ("Y") owning real estate is transferred by a parent company ("X"), the corporation tax, corporate inhabitant tax and enterprise tax are

levied on X on the basis of the capital gain that results from the transfer of ownership. Capital gains that result from the transfer of ownership by X are theoretically equal to the capital gains that result from the transfer of real estate by Y if Y has no assets other than the real estate. Furthermore, there is no difference theoretically if X is an individual, provided that Y has no assets other than the real estate. It should be noted that in the case of a transfer of ownership which satisfies legal requirements under the Special Taxation Measures Law (e.g. approximately 70% of all assets of a company is real estate), a stakeholder may be taxable as if such stakeholder transfers real estate.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

The Land Lease and House Lease Law (hereinafter referred to as the “Law” in this section 10) and the Civil Code regulate matters concerning the lease of real estate. The Law applies to land leases for owning buildings and building leases, including office buildings and residential buildings. The Civil Code governs the lease of real estate for the purpose of any temporary use to which the Law does not apply, and land leases for purposes other than owning buildings.

### 10.2 What types of business lease exist?

Business premises leases are categorised as follows:

#### Land lease for owning a building

##### 1 Ordinary land lease

The Law specifically regulates matters concerning the period, validity, renewal and legal proceedings related to changes in conditions of the ordinary land lease for owning a building. It should be noted that under the Law, an ordinary land lease for owning a building is automatically renewed and the landlord cannot object to such renewal without a justifiable reason. Such justifiable reasons are not easily found. Hence, under an ordinary land lease, the landlord’s refusal to renew the lease is subject to strict control.

##### 2 Fixed-term land lease

A fixed-term land lease for owning a building is not renewable under the Law. The fixed-term land lease was introduced because of concerns that the strict controls over the landlord’s refusal to renew the lease could inhibit the effective use of real estate. There are three types of fixed-term land lease: (i) the general fixed-term land lease available for both residential purposes and businesses; (ii) the land lease with a special agreement on building assignments; and (iii) the fixed-term land lease for businesses under the Law.

#### Building lease

##### 1 Ordinary building lease

Under the Law, the renewal of an ordinary building lease cannot be rejected by the landlord without a justifiable reason, which is not easily found.

##### 2 Fixed-term building lease

A fixed-term building lease is not renewable under the Law.

### 10.3 What are the typical provisions for leases of business premises in Japan regarding: (a) length of term; (b) rent increases; (c) tenant’s right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

#### a) Length of term

##### Land lease for owning a building

###### 1 Ordinary land lease

Under the Law, the term of the ordinary land lease for owning a building shall be 30 years, and when a term longer than 30 years has been provided, such term shall be effective.

###### 2 Fixed-term land lease

Under the Law, the term of the general fixed-term land lease for owning a building shall be 50 years or more. With regard to a lease with a special agreement on building assignments, the right to assign the building to the landlord at a reasonable consideration in order to terminate the ordinary lease can be exercised more than 30 years after the commencement of the lease. With regard to the fixed-term land lease for businesses, the term of the lease shall be 10 years or more but less than 50 years.

##### Building lease

###### 1 Ordinary building lease

The term of the ordinary building lease depends on the agreement.

###### 2 Fixed-term building lease

The term of the fixed-term building lease depends on the agreement.

#### b) Rent increases

Under the Law, if rent becomes inadequate (especially if it differs significantly from the market rent), the landlord or tenant may request an increase or decrease in the amount of rent. This applies to both land leases for owning buildings and building leases. The right to request an increase can be modified in the lease agreement. It should be noted that the right to request a decrease cannot be excluded from the agreement, except in the case of fixed-term building leases. The provisions with respect to rent increases or decreases are prepared taking into consideration the above legal restrictions.

#### c) Tenant’s right to sell or sub-lease

The lease agreement usually prohibits the tenant from assigning the lease or sub-leasing without the consent of the landlord.

#### d) Insurance

In general, there is no provision in relation to insurance in the lease agreement and each of the lessor and the lessee purchases insurance at its own expense to cover its properties.

#### e) (i) Change of control of the tenant

The lease agreement usually does not prohibit the change of control of the tenant.

#### e) (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

The lease agreement usually prohibits the transfer of the lease as a result of a corporate restructuring.

#### f) Repairs

The Civil Code provides that the landlord is liable for all repairs necessary for the use of the premises, and some lease agreements provide for this as well. However, if the parties agree in a way that differs from this provision, their agreement prevails over such provision under the Civil Code. Usually, the lease agreement stipulates that the landlord is required to make repairs.

#### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

If the landlord is an individual, income tax and individual inhabitant tax are levied on the landlord. The income tax rate of such tax is progressive.

If the landlord is a corporation, corporation taxes, corporate inhabitant taxes and enterprise taxes are levied on the landlord.

A consumption tax is applied to business building leases.

#### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

##### Cancellation

Under the Civil Code, in the event that a party breaches a lease agreement, the other party can cancel that lease agreement provided that the party has required the breaching party to cure the breach within a reasonable period if such cure is possible. However, under the case law, the landlord cannot cancel a lease agreement if a tenant can establish the existence of any special circumstance under which there still remains a relationship of mutual trust between the landlord and the tenant even after the breach. It should be noted that under case law, non-payment of rent may entitle a landlord to terminate the lease, because such non-payment may destroy a relationship of mutual trust between the landlord and the tenant.

##### Renewal

As we mentioned in question 10.1, under the Law, a landlord of an ordinary lease cannot object to a renewal without a justifiable reason if such renewal is requested by the tenant. Such justifiable reasons are not easily found. Hence, under an ordinary lease, a landlord's refusal to renew the lease is under strict controls. It should be noted that an offer of compensation by a landlord may be considered when the court finds that there is a justifiable reason. Hence, in practice, if a landlord desires to reject the renewal of a lease in any way, it is likely that the landlord will make such an offer.

On the contrary, a fixed-term lease is not renewable and terminates upon the expiration of the lease term.

#### 10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

No, the landlord and/or the tenant of a business lease do not cease to be liable for their respective obligations under the lease once they have sold their interests, because any obligations arising out of the lease prior to the transfer of the lease cannot be assigned without any specific agreement. They can be responsible in respect of pre-sale non-compliance.

#### 10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Currently, there are no such "green obligations" commonly found in leases.

However, please note that the Tokyo Metropolitan government requires the owners of certain large greenhouse gas emitters, including office buildings, to reduce greenhouse gas emissions. This local regulation also requires tenants to cooperate with the owners of buildings on the reduction of the greenhouse gas emissions. Therefore, the owners of buildings may add certain provisions relating to energy efficiency to the leases to impose some "green obligations" on tenants in the future.

## 11 Public Law Permits and Obligations

#### 11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.

##### Zoning

The City Planning Law is the main law which governs real property development and zonings. In general, in urbanisation control areas (*shigaikachouseikuiki*), the development of land is subject to strict control and in areas designated for urbanisation (*shigaikakuiki*); development may be allowed if such development satisfies the requirements for development under the City Planning Law. The Building Standard Law regulates the land use of the designated area, the ratio of the total floor area to the site area (*yosekiritsu*), the ratio of the building area to the site area of the building (*kenpeiritsu*), and relevant matters.

##### Environmental Law

The Soil Contamination Countermeasures Law is the main environmental law concerning land. Under this Law, if the land is designated as contaminated to an extent that may harm the health of inhabitants in the neighbourhood through underground water, etc., the prefectural governor may order the owner of such land to take appropriate measures, including the clean up of such land.

It should be noted that the owners of buildings are sometimes required to take appropriate measures to remove the health risks to inhabitants in buildings associated with the presence of asbestos.

#### 11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

In general, the state may not force land owners to sell land to the state. However, under the Land Expropriation Law, the state is entitled to take land in exercise of the right of eminent domain in specified cases (e.g., such land is located in the area specified for planned public facilities such as roads). The price process is controlled under the Land Expropriation Law, and the relevant governmental authority may determine such price in accordance with the Land Expropriation Law, considering the fair market prices, etc.

### 11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

The city, town and village control land/building use and/or occupation, and environmental matters, in accordance with the laws and local regulations. The buyers can obtain information concerning these matters at the city, town and village.

### 11.4 What main permits or licences are required for building works and/or the use of real estate?

In general, confirmations under the Building Standard Law are required for building works and the use of real estate. In the case of land development, permits under the City Planning Law and relevant laws are required. The Agricultural Law governs the use of farmland.

### 11.5 Are building/use permits and licences commonly obtained in Japan? Can implied permission be obtained in any way (e.g. by long use)?

A building/use confirmation can be obtained if the building/use satisfies the requirements under the relevant law. In cases where one seeks more benefits for the building/use (e.g., a greater ratio of total floor area to site area), special permits are necessary and such permits are not necessarily easily obtained. Implied permission cannot be obtained.

### 11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

It depends on each case. It should be noted that under the Building Standard Law, the building official shall give notice that the building plan conforms to the regulations within a specific period depending on the nature of the building. In addition, qualified private citizens may give confirmations for the building/use.

### 11.7 Are there any regulations on the protection of historic monuments in Japan? If any, when and how are they likely to affect the transfer of rights in real estate?

Yes, there are regulations on the protection of historic monuments in Japan, such as the Act regarding the Protection of Cultural Properties. Under the law, owners of important cultural properties (such as old temples and castles) or registered tangible cultural properties (such as old buildings and monuments) are required to manage and repair them. Even if the owner would like to sell such important cultural properties to a third party for a certain price, they will be required to give a right of first refusal to the Commissioner for Cultural Affairs for the same price. If the Commissioner accepts the offer within 30 days, a sale will be carried out between the seller and the Commissioner. On the other hand, there is no legal restriction on the transfer of the ownership right of registered tangible cultural properties. The seller is only required to deliver the registration certificate of the property initially delivered by the Minister of Education, Culture, Sports, Science and Technology to the buyer.

### 11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in Japan?

Information about designated contaminated areas under the Soil

Contamination Countermeasures Law is made public at the offices of prefectural governments. Such information is also available on the website of the Ministry of the Environment or other prefectural governments. Please note that, under the Soil Contamination Countermeasures Law, while areas containing amounts of contaminating substances greater than the amount stipulated in the relevant criteria detected as a result of legally compulsory investigations shall be designated as contaminated areas, areas containing amounts of contaminating substances exceeding such criteria found as a result of voluntarily investigations will not be designated as such areas without the voluntarily application for such designation by the owner, the manager or the occupant of the land. As designated contaminated areas have been found usually due to voluntarily investigations and there have been few cases where such voluntarily applications were made, such designated contaminated areas are only a part of the contaminated areas in Japan. Therefore, you should take your own steps to survey land suspected of being contaminated or have the seller survey the land before you purchase it.

### 11.9 In what circumstances (if any) is environmental clean up ever mandatory?

Under the Soil Contamination Countermeasures Law, in the case of: (i) the abolishment of manufacturing factories using certain hazardous materials; or (ii) a prefectural governor's order, which may be delivered if the prefectural governor decides that land contamination may injure the health of the inhabitants, land surveys shall be implemented. In addition, under the Soil Contamination Countermeasures Law, if a land owner intends to develop a large area of land (at least 3,000 square metres), the land owner is required, at least 30 days before beginning any changes, to notify the governor of each prefecture of the development. If the governor determines the land as possibly contaminated and orders the land owner to investigate, the landowner must comply. If the results of such land surveys do not satisfy the relevant regulations, the prefectural governor can designate such land as a contaminated area. The prefectural governor can order the land owner to clean up such land if it is located within an area designated as contaminated and if there is a risk to the health of people.

### 11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Japan.

Under the Energy Saving Law, owners who intend to construct or refurbish residences of a certain scale (at least 2,000 square metres of total floor space) or other buildings (at least 300 square metres of total floor space) must file a report to the relevant government authority on the energy saving measures being applied to the building. If such measures are insufficient, the authority can advise or order the owner to take more effective energy saving measures.

## 12 Climate Change

### 12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

#### 1. Nationwide mandatory emissions trading scheme

There is no nationwide mandatory emissions trading scheme in Japan. It is now being discussed under the new government of Japan.



## 2. Regional mandatory emissions trading scheme in Tokyo

The Tokyo Metropolitan government requires the owners of greenhouse gas emitters, including office buildings, which use more energy than the equivalent of 1,500 kilolitres of oil for the previous three successive years, to reduce greenhouse gas emissions from April 1, 2010. The target for the first compliance period (April 2010 to March 2014) has been set at 6% or 8% (according to the type of the building) below base emissions, which will be, in general, determined based on the amount of emissions from the building during the last three years. In order for the owners of large buildings to fulfil this requirement, they are mandated not only to reduce greenhouse gas emissions from their respective buildings, but also permitted to trade in certain Tokyo Metropolitan government-sanctioned credits (the “Tokyo Credits”). They cannot use the Kyoto credits (such as CERs) to accomplish their targets. In cases where the owners of the large buildings cannot meet their obligations for greenhouse gas emission reductions, they will be punished and may be ordered to obtain additional amounts of the Tokyo Credits according to a formula that multiplies the amount of the unfulfilled obligation by 1.3. Furthermore, in cases where the owners of large buildings fail to obtain these additional Tokyo Credits, the Governor of Tokyo may obtain them in place of the owners and subsequently may charge the cost of such purchase to the owners.

## 3. Reporting obligation

The only major legislative preparations that the Japanese government has made with respect to global warming so far are the reporting obligations with respect to the amount of greenhouse gas emissions pursuant to the Act on Promotion of Global Warming Countermeasures and the Energy Saving Law. Under these laws, a company that uses more energy than the equivalent of 1,500 kilolitres of oil in a previous year at its combined business buildings and factories located in Japan, and a franchisor that uses more energy than the equivalent of 1,500 kilolitres of oil in the preceding year at its combined business buildings (including the franchisees’ business buildings) located in Japan, are obliged to submit reports detailing their greenhouse gas emission amounts.

Owners of the Buildings in Tokyo where more energy than the equivalent of 1,500 kilolitres of oil in a previous year was used are required to submit regular reports about greenhouse gas emission amounts to Tokyo Metropolitan Governor.

## 4. Increase of renewable energy

From July 1, 2012, the Feed-in Tariff Law, establishing a fixed price buy-back programme for all renewable energy, became effective. Under this programme, electric utilities are obliged to enter into power purchase agreements (the “PPA”) and grid connection agreements when they are requested to do so by a renewable electricity producer, unless electric utilities can establish that they have justifiable reasons described in the related regulation. For three years, beginning from the effective date, special consideration to the profitability of producers will be given when prices and terms to be applied to the PPA are determined. In this regard, 40 yen/kWh (excluding consumption tax) and 20 years can be applied to the PPA for the solar power generation facilities (having an output of 10kW or more), if (i) certification for the facility has been obtained from the Minister of Economy, Trade and Industry by March 31, 2013, and (ii) submission to an electric utility of a written application for a grid connection agreement are completed by the same date.

---

### 12.2 Are there any national greenhouse gas emissions reduction targets?

---

On September 22, 2009, at the United Nations Summit on Climate Change, attended by leaders from more than 90 countries, the then Prime Minister Yukio Hatoyama promised that Japan would aim to reduce carbon dioxide emissions by 25% by 2020 compared to the 1990 level, on the condition that all the major global economies would join Japan in setting ambitious targets for carbon dioxide reduction.

---

### 12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

---

The Tokyo Metropolitan government requires owners who intend to construct or refurbish buildings with a total floor space of over 10,000 square metres to take measures to meet certain energy efficiency criteria.

**Hideaki Ozawa**

Nishimura & Asahi  
Ark Mori Building, 1-12-32 Akasaka  
Minato-ku  
Tokyo 107-6029  
Japan

Tel: +81 3 5562 8500  
Fax: +81 3 5561 9711~9714  
Email: [info@jurists.co.jp](mailto:info@jurists.co.jp)  
URL: [www.jurists.co.jp](http://www.jurists.co.jp)

**PARTNER since 1996.**

**Admitted:** Japan 1980; New York 1992.

**Education:** Columbia University School of Law (LL.M., 1991). Legal Training and Research Institute of the Supreme Court of Japan. The University of Tokyo (LL.B., 1978; Master of Engineering, 1985).

**Professional Experience:** Dewey Ballantine, New York, 1991-1992.

**Practice Areas:** Real Estate, Environmental Law, Construction Law.

**Papers/Publications:** Author: Soil Contamination Countermeasures Law and Civil Liability, Hakuyosha, 2011; Asbestos in Buildings and the Law, Hakuyosha, 2006; U.S. Condominium Laws, Hanrei Times, Vols. 997, 999, 1999; Very Deep Underground Use System as a Bypass, Jichi-Kenkyu, Vol. 74, No. 9, 1998. Co-Author: Japan Chapter, The ICLG to: Real Estate 2012; Japan Chapter, PLC: The Environment multi-jurisdictional guide 2011/12 (Japan Chapter); Japan Chapter, The ICLG to: Environment & Climate Change Law 2011; Tokyo's Greenhouse Gas Regulation and Emissions Trading, Hakuyosha, 2009; Corpus Juris Finance Update, Shojihomu, 2006; Corpus Juris Finance, Shojihomu, 2003; Memories of Cities, Hakuyosha, 2002; Fixed Term Building Leases, Jyutaku-shimpo-sha, 2000.

**Languages:** Japanese and English.

**Ryoji Moroi**

Nishimura & Asahi  
Ark Mori Building, 1-12-32 Akasaka  
Minato-ku  
Tokyo 107-6029  
Japan

Tel: +81 3 5562 8500  
Fax: +81 3 5561 9711~9714  
Email: [info@jurists.co.jp](mailto:info@jurists.co.jp)  
URL: [www.jurists.co.jp](http://www.jurists.co.jp)

**ASSOCIATE since 2008.**

**Admitted:** Japan 2007.

**Education:** Legal Training and Research Institute of the Supreme Court of Japan (2007). Keio Law School (J.D., 2006). The University of Tokyo (LL.B., 2004).

**Practice Areas:** Real Estate, Real Estate Finance, Project Finance, Environmental Law, Capital Markets.

**Papers/Publications:** Author: Key points in starting a solar power business under the Japanese feed-in tariff scheme, October 2012 issue of Business Homu; Efforts to expand renewable energy in Japan to be expanded by means of a feed-in tariff, July 2011 issue of Business Homu. Co-author: Project finance for solar power businesses under the Japanese Feed-In Tariff Act, Financial Law Journal Vol.60, No.16 (August 25, 2012); Japan Chapter, ICLG: Real Estate 2011; Japan Chapter, ICLG: Environment & Climate Change Law 2011; Tokyo's Greenhouse Gas Regulation and Emissions Trading, Hakuyosha, 2009; Japan Chapter, PLC Cross-border Environment Handbook 2009/10.

**Languages:** Japanese and English.

## NISHIMURA & ASAHI

Nishimura & Asahi is one of Japan's premier full-service law firms, covering all aspects of domestic and international business and corporate activity. The firm currently has more than 450 Japanese and foreign lawyers and employs over 500 support staff, including tax accountants, and one of the largest teams of paralegals in Japan.

Through the enhancement of professional and organisational synergies, resulting from the firm's expansion, an unprecedented level of client service is made possible in highly specialised and complex areas of commercial law. Nishimura & Asahi understands its clients' growing needs and its fully integrated team of lawyers and professional staff are proud to share the same fundamental philosophy: an uncompromising commitment to excellence.

In order to further enhance our overseas practice, we recently opened offices in Hanoi and Singapore. The firm also recently opened two more offices in Japan, one in Osaka and one in Nagoya.

**Key areas of practice:**

**Corporate:** General Corporate; M&A; Compliance; Start-up Businesses; Labour Law; and Real Estate/Environmental. **Finance:** Banking, Capital Markets; Asset Management; Structured Finance/Securitisation; Asset Finance; Acquisition Finance; Insurance; and PFI/Project Finance. **Restructuring/Insolvency:** Restructuring/Insolvency. **Cross-Border Practice:** International Transactions; International Trade; International Disputes; and International Taxation. **Dispute Resolution:** Civil & Commercial Disputes; IP Disputes; Administrative Disputes; and Specialised Disputes. **IT/IP:** IP Transactions; Venture Capital/Entrepreneurial Services; and Telecommunications/Media. **Corporate Crisis Management:** Corporate Crisis Management. **Antitrust:** Antitrust. **Tax:** Tax Counselling; and Tax Controversy and Litigation. **Trusts & Estates:** Trusts & Estates. **Asia:** China; Hong Kong; India; Indonesia; Korea; Singapore; Taiwan; Thailand; Vietnam; and Rest of Asia. **Middle East:** Saudi Arabia; U.A.E.; and Rest of Middle East/Islamic Transactions. **Public Interest Activities:** Assistance to Administrative Organisations; and Education and Professional Activities.

**Managing Partner:** Mr. Masaki Hosaka.

**Languages:** Japanese, English, Chinese (Mandarin) and French.

**Total number of lawyers:** 469.

**Email:** [info@jurists.co.jp](mailto:info@jurists.co.jp)

## Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining
- Oil & Gas Regulation
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Securitisation
- Telecoms, Media & Internet
- Trade Marks

