

## Corporate Newsletter

April 2,  
2020

## Japan: Outline of the COVID-19 Special Measures Act of Japan

Kazuho Nakajima

\* This newsletter was drafted based upon the information available as of March 31, 2020

The Act on Special Measures Concerning Covid-19 (hereinafter referred to as the “**COVID-19 Special Measures Act.**” Article numbers hereinafter referred to without reference to the name of the legislation mean those of the COVID-19 Special Measures Act) was enacted in the Diet of Japan on March 13, and took effect on the following day. The COVID-19 Special Measures Act adds COVID-19 to the scope of application by amending the Act on Special Measures Concerning New Types of Influenza, etc., which was enacted in 2012. At a press conference on the same day, Prime Minister Abe stated that the COVID-19 Special Measures Act has been enacted to prepare for emergencies, and at that point, he does not plan to declare a state of emergency, and he will make a careful judgment by listening to the opinions of experts. The COVID-19 Special Measures Act authorizes the prime minister of Japan to declare a state of emergency, and upon declaration, authorizes prefectural governors to take emergency measures, such as restrictions on the use of facilities used by a large number of people. As of the date of this newsletter, a state of emergency has not been declared under the COVID-19 Special Measures Act yet, and at the time of writing we cannot predict whether such a declaration will be made soon given the current spread of COVID-19 in Japan. This newsletter briefly explains the COVID-19 Special Measures Act.

The COVID-19 Special Measures Act is divided into the following three chapters: (i) planning measures before an outbreak, (ii) taking measures after an outbreak, and (iii) taking emergency measures.

With respect to planning measures before an outbreak, the Japanese government will first prepare a plan, and based on that

This newsletter is the product of its authors and does not reflect the views or opinion of Nishimura & Asahi. In addition, this newsletter is not intended to create an attorney-client relationship or to be legal advice and should not be considered to be a substitute for legal advice. Individual legal and factual circumstances should be taken into consideration in consultation with professional counsel prior to taking any action related to the subject matter of this newsletter.

© Nishimura & Asahi 2020

plan, the prefectures and municipalities will prepare plans. Given that COVID-19 has already started to spread in Japan, the COVID-19 Special Measures Act provides that plans for measures against the new type of influenza (such plans are available only in Japanese at [https://www.cas.go.jp/jp/seisaku/ful/keikaku/pdf/h29\\_koudou.pdf](https://www.cas.go.jp/jp/seisaku/ful/keikaku/pdf/h29_koudou.pdf)), which were prepared by the Japanese government and other organizations prior to the amendment, will apply to COVID-19 (Article 1-2, Paragraph 3 of the Supplementary Provisions).

As for measures to be taken after an outbreak, based on the plan in (i) above, the Japanese government will formulate a basic policy for COVID-19 (Article 18), and issue a nationwide notification outlining the measures to be taken, and the Japanese government, local governments, and public institutions must take coordinated measures. Specific measures include (i) requesting that any individuals or entities cooperate with measures against COVID-19 (such as postponing events or limiting the use of facilities) (Article 24, Paragraph. 9), (ii) an increase in the number of people who will be under quarantine at ports and airports, (iii) the use of hospitals and accommodation facilities in the vicinity of ports and airports in the event of a shortage of quarantine facilities (Article 29), (iv) restrictions on the arrival of ships and aircraft from countries where COVID-19 has spread (Article 30), and (v) requesting that medical institutions provide medical care to patients infected with COVID-19 (Article 31). Some measures had already been implemented before the enforcement of the COVID-19 Special Measures Act.

On March 28, the Japanese government formulated a basic policy for COVID-19. The policy provides, among other things, the following measures to prevent the spread of COVID-19. If a disease cluster is likely to occur, the prefectures will request a voluntary shutdown of facilities relating to the cluster. The prefectures will strongly request that gatherings that meet the following three conditions, (i) enclosed spaces, (ii) overcrowded spaces and (iii) close contact, be voluntarily suspended. With respect to nationwide and large events, the prefectures will also request that event organizers take measured responses, including suspending or postponing events if the risks are not well addressed.

Emergency measures will be taken after the prime minister declares a state of emergency following the satisfaction of the following two requirements (Article 32).

- (a) An outbreak of a disease in Japan that is likely to cause significantly serious damage to the lives and health of the people; and
- (b) An outbreak of a disease that has or is likely to have a material effect on the national life and economy through a rapid, nationwide spread.

Requirement (a) above means that the frequency of serious cases is considerably higher than that of seasonal influenza, which is prevalent every year (Article 6, Paragraph 1 of the Enforcement Order of the Act on Special Measures Concerning New Types of Influenza, etc.; hereinafter referred to as the “**Enforcement Order**”).

Requirement (b) above means (i) the occurrence of cases in which the paths of transmission of those infected with the disease cannot be identified, or (ii) the existence of a justifiable suspicion that the disease is spreading, such as cases in which patients diagnosed with the disease have engaged in activities that could potentially spread the disease to a large number of people (Article 6, Paragraph 2 of the Enforcement Order).

The declaration of a state of emergency must be publicly announced by designating the period during which the declaration is in force, the areas, and any other relevant matters regarding emergency measures to be taken (Article 32, Paragraph 1, sub-paragraphs). Governors of prefectures and mayors of municipalities in areas designated by the declaration of a state of emergency will take individual emergency measures as necessary. The following are specific examples of emergency measures.

**(1) Request for Cooperation to Prevent Infection**

(a) Voluntary Restriction on Outings

A prefectural governor may request that residents not leave their homes for a certain period or area, except when necessary to maintain their livelihoods (Article 45, Paragraph 1). According to the guidelines for the new type of influenza, which were prepared before the enactment of the COVID-19 Special Measures Act, the phrase “when necessary to maintain their livelihoods” includes visits to medical institutions, purchases of food, and attendance at work (page 74 of the “Guidelines for Measures for the New Type of Influenza, etc.” revised on June 21, 2018 by the Council for Countermeasures for the New Type of Influenza, etc. and Avian Influenza, etc.).

(b) Restrictions on the Use of Facilities Used by a Large Number of People

A prefectural governor may request that (i) a person who manages facilities used by a large number of people, or (ii) a person who organizes events using such facilities restrict or discontinue the use of the facilities, or restrict or suspend the holding of events for a certain period of time (Article 45, Paragraph 2). If the facility manager or the event organizer does not respond to this request without justifiable reasons, the governor may instruct the facility manager or the event organizer to take measures pertaining to the request only when it is deemed particularly necessary (Article 45, Paragraph 3).

The COVID-19 Special Measures Act provides for no penalties for failing to comply with requests regarding voluntary restrictions on outings, or requests or instructions regarding restrictions on the use of facilities. Furthermore, no public compensation is available for these measures because they are inherent social constraints in business activities (according to responses by the Minister of State, Masaharu Nakagawa on March 23, 2012 in the meeting minutes No.5 of the Cabinet Committee of the 180th Session of the House of Representatives).

This request may not extend to restrictions on the use of facilities, but may only be limited to (i) restrictions on visitors, (ii) prohibitions against admission for those who manifest with symptoms of COVID-19, (iii) installation of hand sanitizers, (iv) disinfection of facilities, and (v) communicating with vectors regarding wearing masks and other preventive measures against infections (Article 12 of the Enforcement Order).

“Facilities used by a large number of people,” which are subject to the above restrictions, consist of (i) those with a floor space exceeding 1,000 square meters and (ii) those without minimum floor space requirements (Article 11 of the Enforcement Order). The following are facilities with minimum floor space.

- (a) universities, specialized training schools (excluding specialized training schools with upper secondary education), miscellaneous schools, and other similar educational facilities;
- (b) theatres, movie theaters or entertainment halls;
- (c) meeting places or public halls;
- (d) exhibition sites;
- (e) department stores, markets and other stores engaged in the sale of goods (excluding sales spaces for food, drugs, medical devices and other sanitary goods, fuel, and other goods that are designated by the Minister of Health, Labour and Welfare as indispensable for daily life);
- (f) hotels (limited to those used for gatherings);
- (g) gymnasiums, swimming pools, bowling centers, and other similar sports or amusement facilities;
- (h) museums, galleries or libraries;
- (i) cabarets, night clubs, dance halls and similar amusement facilities;
- (j) barbers' shops, pawnbrokers, rental clothes stores and other stores engaged in similar services; and
- (k) driving schools, tutoring schools, and other facilities engaged in learning support similar thereto.

Facilities without minimum floor space requirements are: (l) schools (excluding (a) above); and (m) nursery schools, healthcare facilities for the elderly, and other similar facilities that provide welfare or health and medical services used for day-care or short-term stays.

Restrictions on the use of the facilities above do not include station terminals or company factories or offices. Supermarkets are subject to restrictions on the use of items in (e) above, but sales spaces for items indispensable for daily life (e.g. foodstuffs) are not subject to the restrictions. Floor space of 1,000 square meters will be judged by including sales spaces, which are not subject to restrictions (Footnote 9 on page 77 of the Guideline for Measures for the New Type of Influenza, etc. mentioned above).

The facilities listed in (a) to (k) above with a floor space of 1,000 square meters or less may also be subject to restrictions. However, even if such restrictions are requested, the scope of facilities and means of restrictions are likely to be limited because the COVID-19 Special Measures Act stipulates that the facilities will be designated and a public notification issued by the Minister of Health, Labour and Welfare as particularly necessary in light of the situation, trends or causes, or social circumstances" (Article 11, Paragraph 1, subparagraph 14 of the Enforcement Order).

## (2) Measures for Stabilization of National Lives and Economy

### (a) Request for Sale of Goods

A prefectural governor may request that owners of goods necessary for emergency measures that are handled by persons engaged in the business of production, collection, sale, distribution, storage or transportation (hereinafter referred to as "**Specified Goods**") sell them (Article 55, Paragraph 1). If the owner does not respond to the request without justifiable grounds, the governor may expropriate the Specified Goods only when he or she finds it particularly necessary (Article 55, Paragraph 2). The governor may order a person in the business of producing, collecting, selling, distributing, keeping, or transporting specified commodities to store

Specified Goods (Article 55, Paragraph3).

The term “Specified Goods” refers to drugs, foodstuffs, medical devices, sanitary products, regenerative medical products, fuel, and other goods that the Prime Minister has publicly declared to be necessary for implementing emergency measures (Article 14 of the Enforcement Order).

In the event Specified Goods are expropriated or stored, the Japanese government and prefectural governments must compensate for losses that would normally arise from such disposition (Article 62, Paragraph1). “Losses normally incurred” refers to losses arising from normal and socially accepted circumstances, and does not include losses arising from special circumstances (see No. 372, p. 13 of the Legal and Regulatory Explanatory Materials No. 1). “Losses” refers to loss of or damage to the goods themselves, expenses incurred for storing goods, and profits that would have been gained if storage had not been ordered (p.13).

(b) Preservation of Administrative Rights and Interests

The heads of national administrative organizations may extend the expiration dates of administrative rights and interests of those who have been affected by the spread of COVID-19, and may also provide exemptions from obligations that have not been fulfilled by statutory deadlines (Article 57, Article 2 to Article 5, and Article 7 of the Act on Special Measures for the Protection of the Rights and Interests of Victims of Specific Emergency Disasters). The extended or exempted deadlines are stipulated by government ordinances.

**(3) Other Measures**

The COVID-19 Special Measures Act stipulates the following emergency measures in addition to the measures mentioned in (1) and (2) above.

- A prefectural governor may use land, buildings, or materials with the consent of owners and tenants when necessary to establish a temporary medical facility, and the governor may use the land, buildings or materials without the consent of the owners or tenants when (i) (a) the owners or tenants do not give consent without justifiable grounds, or (b) the consent of the owners or tenants cannot be obtained because their whereabouts are unknown, and (ii) the governor finds it particularly necessary (Article 49).
- Local governments and public institutions that are operators of electricity, gas and water supplies must take necessary measures to supply electricity, gas and water in a stable and appropriate manner (Article 53).
- Transportation, telecommunications and postal service operators must take necessary measures to ensure transportation, communication and postal services for passengers and cargo (Article 54).
- The heads of administrative organizations and local administrative organizations must take necessary measures to stabilize the prices of goods and services highly relevant to national lives (Article 59).
- Government-related financial institutions shall endeavor to take appropriate measures such as providing special loans, extending the repayment period or deferring the period, and reducing interest rates (Article 60).



**Kazuho Nakajima**

Partner

E-mail: [k\\_nakajima@jurists.co.jp](mailto:k_nakajima@jurists.co.jp)

Kazuho Nakajima primarily assists corporate clients with mergers and acquisitions, international commercial transactions, regulatory matters, litigation and disputes.

He has extensive experience with complex legal issues, such as mergers and acquisitions by a public-private investment fund in the context of a business turnaround, a dispute between a securities company and a stock exchange involving extensive damages, adoption of anti-takeover defense measures for the first time in Japan, expansion of foreign businesses into the Middle East involving geopolitical risks, and a commercial arbitration involving a significant amount of claims regarding price adjustment clauses in a merger and acquisition.

Against the background of rising concern over national security, technology competition and counterterrorism in the international community, he engages in transactions relating to U.S. economic sanctions and export control regulations for non-U.S. companies, as well as Japanese export controls and money laundering regulations.