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ENVIRONMENTAL REGULATORY FRAMEWORK

1. What are the key pieces of environmental legislation and the regulatory authorities in your jurisdiction?

The Ministry of the Environment has a major role in environmental administration and has exclusive jurisdiction over matters involving waste, environmental pollution, natural conservation and wildlife protection (*see box, The regulatory authority*).

The key environmental legislation includes the:

- Water Pollution Control Law.
- Air Pollution Control Law.
- Environmental Impact Assessment (EIA) Law.
- Waste Disposal and Public Cleansing Law (Waste Law).
- Soil Contamination Countermeasures Law (SCCL).
- Pollutant Release and Transfer Registers Law.

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

Certain laws give local governments authority to establish their own local ordinances concerning environmental matters. Even without express legal authorisation, local governments can establish local ordinances that are more strict or broad than national law, provided they are consistent with national law.

REGULATORY ENFORCEMENT

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

If a substantial violation is known to the relevant regulator, the violation is generally rectified by the regulator's guidance or order.

However, illegal dumping remains a serious social issue. According to the 2011 White Paper on the Environment, Recycling Society and Biological Diversity, there were around 57,000 tonnes or 279 cases of illegal dumping of industrial waste in 2009. Measures such as tighter penalties, establishing and strengthening a manifest system (*see Question 12*) and joint patrols between the regional environment offices (local offices of the Ministry of the Environment) and relevant local governments are being taken, but large-scale cases where the amount of illegal dumping reaches over 5,000 tonnes still occur.

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

ENVIRONMENTAL NGOS

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

Environmental NGOs are not particularly active. Their role of promoting public interest has traditionally been taken on by the government. In addition, only the government can prosecute environmental law violations. Private individuals, including environmental NGOs, cannot file claims to remedy breaches unless their own rights have been infringed. Therefore, the powers of environmental NGOs are weak.

However, non-profit corporate reform has recently occurred to stimulate public interest in private sector activities. The reform simplified the incorporation of non-profit companies.

ENVIRONMENTAL PERMITS

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

Integrated/separate permitting regime

There are several statutes that regulate emissions. However, there is no integrated regime that regulates all emissions. Many environmental regulations prohibit emissions exceeding certain standards and require emitters to comply with these standards.

Single/separate permits

See above, *Integrated/separate permitting regime*.

Country Q&A

5. What is the framework for the integrated permitting regime?

Permits and regulator

There is no integrated regime that regulates all emissions (*see Question 4*).

Length of permit

See *Question 4*.

Restrictions on transfer

See *Question 4*.

Penalties

See *Question 4*.

WATER POLLUTION

6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?

Permits and regulator

The primary law concerning water quality control is the Water Pollution Control Law. This law regulates the emission of wastewater from factories and business establishments to public water areas (for example, rivers, lakes and marshes, gulfs, coastal areas and waterways) and penetration into groundwater. Prior notification to the governor of the relevant prefecture is required for installation of a specific facility under this Law.

Prohibited activities

If a specific facility is to be installed that will emit substances likely to cause harm to human health, the governor of the relevant prefecture must receive prior notification. The governor can order changes to or abolition of the submitted plan if the drains of a specified facility do not comply with effluent water standards. Breach of these orders can result in imprisonment or fines.

Facilities must comply with effluent water standards after installation. Specifically, certain substances affecting human health and preservation of the living environment are subject to emission concentration standards. In addition, in areas where many pollution sources exist, such as Tokyo Bay, there are emission standards by total volume. Additional standards are also implemented through local ordinances.

Clean-up/compensation

If there is emission of effluent water exceeding the effluent standards from the drains of a specific facility, imprisonment or fines can be imposed without issuing an administrative order. If there is violation of total volume standards or penetration into groundwater, rectification orders are issued initially, and penalties can be imposed if the orders are not complied with.

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

Penalties

See above, *Clean-up/compensation*.

AIR POLLUTION

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

Permits and regulator

The Air Pollution Control Law is the main legislation concerning air pollution. This law regulates soot and smoke, particulates and volatile organic compounds (VOCs). Installation of a facility emitting soot and smoke requires prior notification to the governor of the prefecture. Governors of prefectures can order changes or the abolition of the submitted plans if deemed necessary.

Prohibited activities

Certain concentration standards have been determined for specific substances, and emissions of these substances from facilities cannot exceed these standards. In an area with substantial pollution, aggregate volume standards for sulphur oxide and nitrogen oxide can be set, and the aggregate volume per factory unit can be set by plans prepared by the governor of the prefecture.

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

Governors of prefectures can issue recommendations if the reduction of emissions is considerably less than the relevant standards. If the emitter does not follow the recommendations, the governor can make this fact public, or issue an order for the emitter to take certain measures. Anyone in breach of these orders is subject to fines.

The Tokyo air pollution case involved more than 600 asthma and other patients claiming damages for injuries caused by car exhaust fumes against seven automobile manufacturers and the national government, the Tokyo Metropolitan Government and the Metropolitan Expressway Co. The matter was settled by the Tokyo High Court on 8 August 2007.

Under the settlement, the seven automobile manufacturers, and other defendants, agreed to pay some of the patients' medical expenses. According to an official announcement by the Tokyo Metropolitan Government, the seven automobile manufacturers have agreed to pay JPY3.3 billion of a JPY20 billion plan to subsidise the medical expenses of all asthma patients in Tokyo for five years, in addition to the JPY1.2 billion paid in the settlement (as at 1 October 2012, US$1 was about JPY78).

Clean-up/compensation

According to the Air Pollution Control Law, the regulator does not have the authorisation to order polluters to clean up or pay compensation for air pollution, however, if a person becomes ill or dies due to exposure to the hazardous substances specified in the Air Pollution Control Law, the violator becomes liable for this, regardless of whether that violator was negligent.

Penalties

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

CLIMATE CHANGE, RENEWABLE ENERGY AND ENERGY EFFICIENCY

8. Are there any national targets for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)?

There are no targets to reduce greenhouse gas emissions at national level, however, a scheme has been adopted by the Tokyo Metropolitan government (*see Question 10*).

Regarding the use of renewable energy, the Act on Purchase of Renewable Energy Sourced Electricity by Electric Utilities was enacted and a feed-in tariff scheme (FIT scheme) for renewable energy started on 1 July 2012. Under the Act, electrical power suppliers must purchase electricity from renewable energy sources (solar PV, wind power, hydraulic power, geothermal and biomass) at a fixed price for a government-guaranteed period. The price and the period is determined according to the type, form of installation, scale, and so on, of the renewable energy source. Facilities generating renewable power must satisfy the standards and certification required by the Minister of Economy, Trade and Industry (METI).

9. Is your jurisdiction party to the United Nations Framework Convention on Climate Change (UNFCCC) and/or the Kyoto Protocol? How have the requirements under those international agreements been implemented?

Parties to UNFCCC/Kyoto Protocol

Japan is party to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

Implementation

Japan's emissions trading scheme began in 2005 and is known as the Voluntary Emissions Trading Scheme.

Parties who can participate in the system are:

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

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

In addition to the emissions trading scheme, a new emissions trading scheme called Experimental Introduction of an Integrated Domestic Market of Emissions Trading began in 2008. Participation is optional and participants voluntarily set their targets.

There are two types of participants:

- Participants who set their own greenhouse gas emission reduction targets (absolute target or intensity target) and try to achieve them. They can trade allowances, Kyoto credits (such as certified emissions reductions (CER)) and domestic credits.
- Trading participants who only intend to conduct emissions trade.

10. What, if any, emissions/carbon trading schemes operate in your jurisdiction?

The Tokyo metropolitan government required the owners of certain large greenhouse gas emitters, including office buildings, to reduce greenhouse gas emissions from April 2010. The target for the first compliance period (2010 to 2014) has been set at 6% or 8% (according to the type of the building) below base emissions, which will be determined based on the amount of emissions from the building in recent years.

The Tokyo metropolitan government plans to set subsequent compliance periods every five years with targets to reduce emissions during each period. Building owners who must reduce greenhouse gas emissions can use certain Tokyo metropolitan government-sanctioned credits to achieve their targets.

ENVIRONMENTAL IMPACT ASSESSMENTS

11. Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?

Scope

EIAs are required by the EIA Law. There are also ordinances established by local government, which require assessments to be carried out. Local ordinances can be stricter than the EIA Law, as they can, for example, include more:

- Types of target projects.

- Small-scale projects that are outside the scope of the EIA Law.
- Required procedures for public hearings and subsequent monitoring.

Types of project. There are 13 project types that require EIAs under the EIA Law. These include:

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

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

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

Under an amendment to the EIA Law that is scheduled to become effective by 27 April 2013 at the latest (*EIA Law Amendment*), those who conduct Class-1 Projects must submit a planning-stage environmental consideration report when they decide on the area of operations for a project or when other points designated by a governmental ordinance are decided on.

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

Permits and regulator

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

The competent ministers examine the statements in light of the environmental impact and determine whether to grant permission for the project. Because of this, business enterprises should not ignore various opinions given about their draft environmental impact statements when preparing their final EIAs. When the report is submitted, it must state that certain measures will be implemented during the project's operation.

Penalties

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

WASTE

12. What is the regulatory regime for waste?

Permits and regulator

The Waste Disposal and Public Cleansing Law (Waste Law) is the main law relating to waste. General waste and industrial waste are treated differently under the Waste Law. Under this law, an industrial waste disposal contractor must obtain a licence from the governor of the relevant prefecture.

Prohibited activities

The concept of waste. Waste is defined as filth or undesirable objects in solid or liquid form such as garbage, bulky refuse and combustion residue. Whether an object is undesirable is determined by comprehensive consideration of the occupant's intention and the object's characteristics. Because this decision is not simple, it can be disputed.

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

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

Operator criteria

General waste disposal. Disposal contractors of general waste must obtain a licence from the governors of municipalities. To obtain a licence, the applicant must show it has proper facilities and is able to continuously perform its obligations under the licence. There are certain disqualifications from obtaining a licence, including if the applicant:

- Was sentenced to imprisonment or a more severe penalty, and five years have not elapsed since the day on which the execution of the sentence was completed or the sentence no longer applied.
- Had obtained the licence under the Waste Law and five years have not elapsed since the date of the licence revocation.

Illegal disposals can result in orders for suspension of business, or, for severe breaches, licence revocation. Installation of general waste disposal facilities requires permission from governors of prefectures. To obtain permission, simple assessment procedures concerning the living environment must be conducted, and living environment impact survey reports setting out the results submitted.

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

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

Special rules for certain waste

Special management waste is provided for under the Waste Law. This is waste that has a likelihood of explosion, toxicity, infection or causing other damage to the health or the living environment of humans.

Strict disposal and storage standards are imposed on special management waste. A special management industrial waste disposal contractor must also obtain a licence for its activities, which is separate from the business licence for the disposal of industrial waste.

Penalties

Imprisonment/fines. The following are punishable by imprisonment of up to five years and/or fines up to JPY30 million:

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

Reports and on-site inspections. Local government governors or the Minister of the Environment can require a person who conducts or seems to conduct waste disposal to prepare a report on matters deemed necessary. Local government governors can conduct on-site inspections of business establishments or the disposal facilities of persons who dispose of waste or of any material that may become waste.

Restoration to original state. In relation to general waste, governors of municipalities can order persons who conducted a disposal, or who entered into an engagement in non-compliance with the engagement standards, to undertake restoration measures.

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

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

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

ASBESTOS

13. What is the regulatory regime for asbestos in buildings?

Prohibited activities

Asbestos cannot be used in buildings. It is also prohibited to produce, import, offer or use asbestos products that include an amount of asbestos of more than 0.1% per unit with respect to weight, although there are some exceptions.

Main obligations

The owner of a building that contains asbestos (from when its use was allowed) does not have to renovate the building, but must take necessary steps to prevent the spread of asbestos fibres. In particular, if a building contains sprayed asbestos that may be easily dispersed in the building, and the owner has employees in the building, the owner must take appropriate preventative measures.

A contractor that intends to demolish a building must:

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

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

A landlord must keep his building in good repair (*Civil Code*). If asbestos is dispersed in the building, this must be remedied and the landlord must take appropriate measures to prevent this. Failure to do so is a landlord default under the lease.

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

Permits and regulator

Waste asbestos is special management industrial waste. A licence is necessary for the disposal of waste asbestos according to the Waste Law under the special waste management regime (*see Question 12, Special rules for certain waste*).

Penalties

The owner's failure to take appropriate preventative measures is punishable by imprisonment of up to six months or a fine of up to JPY500,000.

CONTAMINATED LAND

14. What is the regulatory regime for contaminated land?

Regulator and legislation

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

Investigation and clean-up

An owner, manager or occupier of land (collectively, a landowner) with a factory where specific hazardous materials have been manufactured, used or disposed of, must investigate the land (*SCCL*):

- When the factory ceases operations.
- If the competent regulator deems that there is a risk of contamination that may harm human health, and orders an investigation by the landowner.

If a landowner makes changes to the character of a large area of land, the landowner must notify the governor of each prefecture at least 30 days before beginning the changes. If the governor determines the land as potentially contaminated and orders the landowner to investigate, the landowner must comply.

If the land is found (in mandatory investigations conducted under the SCCL) to be contaminated to an extent regulated by the SCCL, the land is made a designated area. Under the SCCL, the designated area is divided into two areas based on whether there is a risk of contamination that may harm human health:

- *Yo-sochi-kuiki*, where some measures such as the removal of contamination must be undertaken due to a risk to human health.
- *Keishitsu-henko-ji-yo-todokede-kuiki* is an area that is contaminated, but may not, in its current state, harm human health without a change in the condition of the land. A landowner is only required to notify the governor of each prefecture when it makes changes to the character of the land.

The regulator can order the landowner of *yo-sochi-kuiki* to clean up the contamination. However, if the polluter is clearly differentiated from the landowner, and the regulator deems it appropriate, the order is imposed on the polluter.

Under the SCCL, any person who takes contaminated soil out of the designated areas must delegate disposal of the contaminated soil to authorised contaminated soil disposal companies.

Penalties

If an obligation under the SCCL to investigate soil contamination or to clean up soil contamination is not performed, the landowner or polluter is subject to imprisonment of up to one year, or a fine up to JPY1 million. Non-compliance (for example, false reporting, illegality or unreported matters) is also subject to imprisonment or a fine.

15. Who is liable for the clean-up of contaminated land? Can this be excluded?

Liable party

The landowner can be liable under the SCCL for carrying out or paying for environmental investigation and clean-up, except where a polluter other than the landowner is ordered to clean up the contamination (*see Question 14*).

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

Owner/occupier liability

An owner or occupier who has not caused contamination can be liable for the investigation and clean-up of contamination on their land (*SCCL*).

Previous owner/occupier liability

A previous owner or occupier who caused contamination can be liable for the contamination.

Limitation of liability

There are no limits on liability or ways for a party to limit its liability, if the liability derives from the SCCL.

A buyer often requires a seller to check the level of soil contamination at the time of sale (*see Question 22*). Therefore, in most cases where contaminated land is investigated and cleaned up, that investigation or clean-up is voluntary, rather than performed as an obligation under the SCCL.

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

Lender liability

It is not common for a lender to incur liability for contaminated land. A lender can be liable if it is deemed to be a landowner under the SCCL (*see Question 14*), although there is no precedent for this.

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

Minimising liability

Lenders do not generally take any special steps to minimise this liability.

17. Can an individual bring legal action against a polluter, owner or occupier?

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

ENVIRONMENTAL LIABILITY AND ASSET/SHARE TRANSFERS

18. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale

Because a buyer becomes the landowner, the buyer is subject to the liability of a landowner under the SCCL (*see Question 14*). The buyer does not inherit the environmental liability of a polluter under tort law.

Share sale

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

19. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale

Because a seller loses its interest in the land after the sale, the seller ceases to be liable as a landowner after the sale under the SCCL. However, the seller can still be liable for any contamination it caused pre-sale (*see Question 14*). In addition, if the seller transfers its contaminated land to a buyer controlled by the seller (to avoid liability under the SCCL) and the buyer cannot cover the liability, the seller can still be liable as a landowner under the SCCL.

Share sale

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

20. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale

Except where local ordinances specifically provide (for example, an ordinance of Kanagawa prefecture requires a seller that is a business using particular toxic substances, to disclose their use), a seller of contaminated land is not obliged to disclose environmental information. However, the seller is subject to hidden defect liability under the contract law theory of the Civil Code (*see Question 22*).

The seller and the buyer can agree to exempt the seller from this liability. However, this agreement is void if the seller is either:

- Aware of the contamination at the time of the sale.
- A person who engages in the business of real estate transactions and the buyer is not this type of person (*see also Question 23*).

Share sale

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

21. Is environmental due diligence common in an asset sale/a share sale?

Scope

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

Types of assessment

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

Environmental consultants

Environmental consultants are usually retained by the seller to investigate soil contamination and asbestos issues. The buyer usually hires environmental consultants if it wishes to obtain a report that it will rely on. This report generally only covers soil contamination or asbestos. For other issues, the buyer tends to interview the persons responsible for environmental issues at the company.

22. Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?

Asset sale

Under the contract law theory of the Civil Code, a seller is liable for hidden defects in the object being sold (for example, land) to the buyer. As a result, a buyer is usually unconcerned about the terms and conditions of general environmental issues.

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

- Soil contamination, due to the SCCL (*see Question 14*).
- Asbestos, particularly since the regulations became stricter in 2005 (*see Question 13*).

Therefore, it is now common for the buyer to require a seller of land or a building to give warranties and indemnities concerning soil contamination and asbestos.

Share sale

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

23. Are there usually limits on environmental warranties and indemnities?

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

REPORTING AND AUDITING

24. Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?

Public registers

Making designated areas public. The governors of prefectures publicise contaminated areas found in mandatory investigations under the SCCL as designated areas (*see Question 14*). They also prepare and make available for inspection information ledgers on designated areas.

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

If land is found to be contaminated to an extent regulated by the SCCL because of voluntary investigations by the landowner, the land can be made a designated area (*yo-sochi-kuiki* or *keishitsu-henko-ji-yo-todokede-kuiki*) on the landowner's application (*SCCL*) (*see Question 14, Investigation and clean up*). The governors of prefectures publicise contaminated land that has been made a designated area on application, and prepare information ledgers on designated areas, which they make available for inspection.

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

- Volume of their emissions into the environment.
- Movement of chemical substances outside their business establishments.

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

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

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

Third party procedures

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

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

Environmental auditing

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

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

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

Companies can also disclose environmental information in their:

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

Reporting requirements

There are no requirements of environmental audits or for the submission of environmental reports (*see above, Environmental auditing*).

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

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

27. What access powers do environmental regulators have to access a company?

Environmental regulators have no general investigative authority. However, under various individual laws, they can both:

- Require companies to report and/or submit materials on certain matters.
- Conduct on-site inspections of the company.

ENVIRONMENTAL INSURANCE

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

Types of insurance and risk

In recent years, insurance has become available for:

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

THE REGULATORY AUTHORITY

Ministry of the Environment

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

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

Obtaining insurance

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

ENVIRONMENTAL TAX

29. What are the main environmental taxes in your jurisdiction?

Environmental policy using taxes is still developing, and the government is scheduled to phase in a tax for global warming countermeasures (a carbon tax), targeting crude and refined products, gaseous hydrocarbon and coal, from October 2012. This tax will be paid in addition to petroleum and coal tax. The rate will be JPY760 for crude and refined products per kilolitre, JPY780 for gaseous hydrocarbon per tonne, and JPY670 for coal per tonne eventually.

At present, there are some local governments that impose environmental taxes as detailed below.

Forest preservation tax

Some prefectures (for example, Tottori, Ehime and Kochi) collect forest preservation taxes, which they add on to prefecture tax by enacting an ordinance. This tax is imposed because all prefecture inhabitants benefit from the forest, and tax revenues are allotted for the maintenance and preservation of forests.

Tax liability. The tax payers and the tax rates differ in each prefecture. In many prefectures, taxpayers are both:

- Individuals who are residents or have residential buildings in the prefecture.
- Corporations that have offices in the prefecture.

Tax rates. In Tottori, tax rates are JPY500 each for individuals and, for corporations, tax rates range from JPY1,000 to JPY 40,000 depending on the size of the accounting capital.

Industrial waste tax

This tax has been introduced in many prefectures. It aims to reduce the volume of industrial waste disposed of at final disposal sites, and prevent inflows of industrial waste from other prefectures, by charging tax based on the volume of the industrial waste disposed of at the sites.

Tax liability. The tax payers differ in each prefecture. In the Hiroshima prefecture, tax payers are business operators discharging, or intermediately disposing of, industrial waste that was carried to final disposal sites located in Hiroshima.

Tax rates. The tax rates differ in each prefecture. However, many prefectures settle on tax rates at JPY1000 per tonne of industrial waste.

REFORM

30. What proposals are there for significant reform (changes) of environmental law in your jurisdiction?

The Great East Japan Earthquake occurred on 11 March 2011, causing a nuclear accident at the Fukushima nuclear power plant. The clean-up of the rubble and the removal of radioactive substances from the soil is the main environmental issue at present. The government has established a new Act on special measures that obliges the government to support local governments' efforts to clean up the rubble and waste caused by the earthquake. In response to requests from the relevant mayors of municipalities, the government can take responsibility for the clean-up of the rubble and waste, instead of the municipalities.

With regard to soil, another Act on special measures obliges the government to designate areas polluted by radioactive substances at a certain level and remove such substances in the designated areas.

As this nuclear accident has given rise to doubts about the security of nuclear power plants, the promotion of the use of renewable energy is likely to increase, involving the FIT scheme (*see Question 8*). A carbon tax (the tax for global warming countermeasures) will be implemented in October 2012 (*see Question 29*).

ONLINE RESOURCES

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

Description. The Ministry of the Environment provides documents related to the global environment, waste, air and transportation, water/soil/ground environment, health and chemicals, nature and parks, and so on.

W *www.meti.go.jp/english/policy/energy_environment/renewable/index.html*

Description. The Ministry of Economy, Trade and Industry (METI) provides documents related to the promotion of renewable energy in Japan.

W *www.japaneselawtranslation.go.jp/?re=02*

Description. The Japanese Law Translation Database System provides translations of Japanese laws and regulations into foreign languages (at present, this database does not cover all laws and regulations).

Country Q&A

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Recent transactions. Acting for the seller in relation to environmental litigation in June 2010, when the Supreme Court issued its first judgment in relation to latent defect liability for soil contamination. The court ruled the seller was not contractually liable for fluorine soil contamination, which was unregulated at the time of the sale.

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