

“Opportunity Knocks in Japan” - A Business and Legal Perspective

February 2, 2016
Alumni Reception Center
UC Hastings College of the Law

Co-Sponsors:

East Asian Legal Studies Program, UC Hastings College of the Law
Japan External Trade Organization (JETRO)
Japan Society of Northern California

Program:

- 5:45-6:15 PM Networking/Reception
- 6:15-6:18 PM Welcome Remarks
Setsuo Miyazawa, Senior Professor of Law & Senior Director of the East Asian Legal Studies Program, UC Hastings College of the Law
- 6:18-6:25 PM Introduction of the Panelists by the Moderator
David A. Makman, Law Offices of David A. Makman; Chairman of the Board of the Japan Society of Northern California
- 6:25-7:30 PM Presentations & Panel Discussion
Elizabeth Shoemaker, Of Counsel, Law Offices of David A. Makman: “Doing Deals with Japanese Companies.”
Akiko Kawakatsu, Attorney at Law Admitted in Japan & New York; Partner, Hibiya Station Law Offices; Visiting Assistant Professor, University of Okayama: “Japan Is Welcoming Entrepreneurs: The Recent Change to Japanese Law and Regulation.”
Tomohiro Ono, Attorney at Law Admitted in Japan; Senior Associate, YUASA & HARA: “Starting Business in Japan: Seeking a Good Environment for Your Business.”
Miho Aoki, Principal, International Tax Services, PricewaterhouseCoopers LLP: “The Corporate Tax Roadmap: Tax Discussion Note.”
- 7:30-8:00 PM Q & A
- 8:00-8:03 PM Closing Remarks
Hideki Tachibana, Deputy Director, JETRO San Francisco
- 8:10-9:00 PM Networking

Biographies of Panelists

Elizabeth Shoemaker



Elizabeth Shoemaker is a California attorney with the Law Offices of David A. Makman (formerly Makman & Matz LLP). She is a litigator and transactional attorney fluent in English and Japanese. Her litigation experience includes breach of contract, piercing the corporate veil, commercial real estate, employment law, adversary proceedings in bankruptcy, Proposition 65 defense, and product labeling cases. She has argued in both federal and state courts, and in 2012, she argued before the 9th Circuit Court of Appeals and prevailed. In 2011, she argued before the Bankruptcy Appellate Panel, and the court published *In re Carey*, 446 B.R. 384 (B.A.P. 9th Cir. 2011). Last year she successfully represented a Japanese social media company in a dispute with Oracle. This year she helped a Silicon Valley start-up company negotiate a contract in Japanese with a major Japanese IT company.

Before becoming an attorney, Ms. Shoemaker worked in the field of information technology for 10 years, most of which were spent in Japan. In 1995 she founded Techretary KK, a Japanese corporation focused on bilingual IT support.

Ms. Shoemaker received her BA degree from Amherst College in Massachusetts, a master's degree in International Relations and Pacific Studies from UCSD, and her JD from UCLA School of Law. She can be contacted at liz@makmanlaw.com.

Akiko Kawakatsu



Akiko Kawakatsu is a partner at Hibiya Station Law Offices, Tokyo, Japan. She is also a visiting assistant professor at University of Okayama. She provides global legal assistance. This work includes assisting companies expanding their businesses inside and outside of Japan as well as advising new businesses regarding structure/formation, reviewing contracts, researching relevant regulations, and providing legal advice for risk management.

Akiko is licensed and admitted to practice in Japan as well as New York. She completed an LLM at UC Hastings College of the Law in San Francisco, and she spent a year as a visiting attorney at the law firm of Makman & Matz LLP where she worked on IP and commercial litigation matters. Her litigation experience includes work on the plaintiff side and on the defense side, as well as arbitration experience. Substantively, the litigation she has handled in Japan has involved such diverse areas as shareholder suits, commercial disputes, intellectual property disputes, employment disputes and bankruptcy. She can be contacted at kawakatsu@lawcenter.jp.

Abstracts of Presentations

but it may be what it takes to get an agreement that covers the key risks and, in the end, makes the agreement worth the revenue stamp that goes on it.

Starting Business in Japan
To seek good environment for your business

YUASA and HARA
Tomohiro Ono

VISA

■ **VISA**

- **Entry requirement of foreigners**
- **VISA is not required for an US national entering into Japan under the visa waiver program for 3 months**
- **However, it is still required for any US nationals to take an appropriate VISA corresponding to Resident Card System if he/she wishes to stay longer on business in Japan**

Resident Permit

- **Resident Permit as foreigner (Status of Residence) up to 5 years**
- **6 major categories**

- **Investor/Business Manager, Legal/Accounting Services, Engineer, Specialist in Humanities/International Services, Intra-company Transferee and Skilled Labor**

Resident Card System

- **Resident card is issued and must be held by a foreigner with a certain permit up to 5 years**
- **Re-entry is also allowed during such permitted period**
- **Resident card system is connected and integrated with the immigration, resident registration and resident permit procedure**

Personal data protection

- **Personal Data Protection Law, 2003**
 - **Not in US style but similar to Europe**
 - **More strict regulation than US**
- **Definition of Personal Information Data**
 - **Information about a living individual identifying the specific individual**

was subject to any instruction and project by the corporation.

- In exchange of that, the corporation needs to pay for the employee at the time of assignment
- In addition to that, the corporation needs to provide “reasonable remuneration” to the employee even after the patented invention making commercial success
 - *Olympus* case(the first case of “reasonable remuneration” argued)
- Is Prof. Nakamura a hero or a maverick?
 - *Nakamura v. Nichia Chemical* case (Employee’s invention case)
 - *Nichia v. Toyota Gousei* case (Patent infringement case)

Scheme of “reasonable remuneration” payment

- After *Nakamura v. Nichia Chemical*...
- Art. 35, Secs. 3-5 after 2004 amendment of Patent Law
 - More procedural preparation as the rule for employer and employee
 - *Olympus* doctrine can apply to only a limited situation, which the rule by employer and employee cannot be found or existed with reasonable process to calculate the “reasonable remuneration.”
- Requirements of Labor law for the rule
 - Considered as a part of collective labor contract between an employer and an employee in addition to an individual employment contract
 - Required to have a consent by a group or a union representing over majority of employees

Amendment again in 2015

- Bill to amend Art. 35 in the discussion at the governmental council under Abe Administration
- Total scheme change for employee’s invention
 - Right to file patent for invention to be subject to corporation, if it was made by corporation’s instruction and project
 - In consideration of that, the employee is entitled to be recognized, promoted and/or paid for reasonable amount under the employment relationship with the corporation

Trademark protection

- Trademark Registration filing at JPO
 - Acceleration of examination available

from any responsibility in dispute by a disclaimer in the contract with your company.

- ✓ Royalties: 20.42% (0% under Japan-US Treaty)

4. Consumption Tax (Japanese VAT)

- Scope of Taxation
 - ✓ Transfer of goods in Japan
 - ✓ Provision of services in Japan
 - ✓ Import of goods into Japan
 - ✓ Certain cross-border digital services provided by non-Japanese service suppliers to Japanese service recipients
- Taxation Regime
 - ✓ Basically, a seller is required to collect VAT from a buyer and then pay collected VAT to the Japanese tax authorities by filing a VAT return
 - ✓ A reverse charge applicable to B2B digital services
- Tax Rates
 - ✓ Currently: 8%
 - ✓ Transactions on or after April 1, 2017: Basically 10%
 - ✓ 8% lower tax rate still applicable on or after April 1, 2017 for certain foods and newspaper (*)

(*) subject to 2016 tax reform approval process

Bibliography for Presentations

Note: Copies of relatively recent and short materials are attached. Setsuo Miyazawa

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Elizabeth Shoemaker, Sample Japanese-Language Contract with English-Language Comments. (A copy is attached)

2. Akiko Kawakatsu

Nobuo Nakamura, "The Revision of Japanese Company Law and its Modernization," *Waseda Bulletin of Company Law* Vol. 24

Seiichiro Yonekura and Michael J. Lynskey, "Nothing Ventured, Nothing Gained: Sustaining Entrepreneurship in Japan"

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Nikkei, January 20, 2015, "Japan to ease visa rules for foreigners launching businesses." (A copy is attached)

3. Tomohiro Ono

Laws & Regulations on Setting Up Business in Japan, 2015,

Litigation and enforcement in Japan: overview

Craig I Celniker, Chie Yakura, Steven E Comer and Louise C Stoupe
Morrison & Foerster LLP/Ito & Mitomi

global.practicallaw.com/9-502-0319

MAIN DISPUTE RESOLUTION METHODS

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

Litigation

Litigation is the most frequently used dispute resolution method to settle large commercial disputes in Japan. The Code of Civil Procedure (CCP), which was significantly amended in 1996 and became effective in 1998, provides the following system to efficiently resolve disputes:

- The court conducts preparatory proceedings to clarify and ascertain the material issues and evidence at an early stage. These issues are mainly identified through the exchange of written briefs and evidence, and periodic hearings. The court may allow one of the parties to attend a hearing in the preparatory proceedings by teleconference but only when the other party attends the hearing in person.
- Examination of witnesses and parties must be conducted as efficiently as possible, focusing on the material issues legitimately in dispute after completion of the preparatory proceedings.

IP disputes

Administrative proceedings are frequently used in relation to intellectual property (IP) disputes. Customs proceedings are available for a holder of IP rights, including patent rights, to prevent the import or export of items infringing those IP rights. The IP right holder can obtain a decision on his petition for an injunction within two to three months of starting the proceedings. A panel of expert advisers appointed by the customs bureau advises the customs director on technical issues relating to alleged patent infringement.

In addition, invalidity proceedings at the Japan Patent Office (JPO) are available for a third party to contend directly to the JPO that an issued patent is invalid. The invalidity proceedings can be used together with, or independently from, court proceedings and/or the customs proceedings.

While court proceedings are adversarial, both customs and JPO invalidity proceedings are a combination of inquisitorial and adversarial proceedings.

The applicable standard of proof for a claim to succeed in court and JPO invalidity proceedings is whether it is highly likely that facts that give rise to the claim exist, but the standard in the customs proceedings is not clearly established.

COURT LITIGATION

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

The limitation period for major claims in relation to large commercial disputes is as follows:

• **Contractual claims.** Ten years from when the right becomes exercisable. However, commercial claims (that is, claims that arise out of the commercial activities of one or both parties) are subject to a five-year limitation period from when the right holder can exercise its right (this is normally interpreted from the time that the obligation is due to the right holder).

• **Tort claims.** Three years from when the right holder:

- discovers that he has suffered damage; and
- knows the identity of the person or entity liable for the damage.

Japan has no concept of constructive or imputed knowledge, so the statute of limitations is based on actual knowledge. However, under an absolute statute of limitations, a claim in tort is finally barred after 20 years from the tortious act.

• **Product liability law claims.** These claims are subject to either:

- a three-year limitation period from when a right holder discovers that he has suffered damage, and knows the identity of the person or entity responsible for the damage; or
- a ten-year limitation period from the delivery of a defective product.

• **Ownership of land.** There is no specific statute of limitation.

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

Large commercial disputes are usually brought in the District Court. Appeals from the District Court are brought before the relevant High Court depending on the territory. There are eight High Courts in Japan (see *Question 20*). The Supreme Court is the court of last resort.



To protect trade secrets, the court can both:

- Impose a confidentiality duty on the parties, their attorneys and their employees.
- Order them not to use the trade secret for purposes other than the litigation or to disclose the trade secret to a third party.

A party must present prima facie evidence that the briefs or evidence contain trade secrets, as well as evidence of why the order is necessary (*Article 105-4, Patent Law* (laws on utility model, design right, trade mark, unfair competition and copyright have similar provisions)). Criminal sanctions apply for violation of a confidentiality duty.

When a party, its attorney or its employee are examined in relation to the party's trade secrets, the court can close the hearing to the public if it decides that both (*Article 105-7, Patent Law* (laws on utility model and unfair competition have similar provisions)):

- The party or witness cannot make a sufficient statement in a public hearing due to the material adverse effect it would have on the party's business activities based on the trade secret.
- It cannot reach a proper judgment on the dispute without the proper examination of the witness.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

A party can request evidence from the other party or a third party before the start of litigation under certain circumstances. However, there is no formal penalty if the other party does not provide evidence in response to a party's or the court's request.

A potential claimant or defendant can request that the other party answers interrogatories if the potential claimant has sent a notice of future litigation to the potential defendant. The requested party cannot refuse to answer the interrogatories, unless one of the reasons for refusal specified in the CCP applies (*Article 132-2, CCP*). However, even if it refuses to answer the interrogatories without meeting the criterion for refusal (or falsely answers them), there is no formal penalty. The party's refusal can be taken into consideration in the future litigation and can adversely affect its position.

The court can allow a party to request that the other party or a third party provide documents in its possession, if the court considers that (*Article 132-4, CCP*):

- The documents are necessary for the future litigation.
- It is difficult for the requesting party to collect the documents.
- It is not unreasonable to request production of the document.

Although there are no formal penalties for non-compliance, failure to co-operate can be taken into consideration by the court in subsequent litigation.

Additionally, if it would be difficult to use certain evidence later unless the evidence is immediately preserved, the court can, on petition, order the procurement and examination of the evidence through inspection, witness examination or other methods (*Article 234, CCP*). While there are no formal penalties immediately imposed for non-compliance, if a party fails to comply with a court order for the preservation of evidence, the court, in subsequent litigation, can make an adverse inference and accept the requesting party's characterisation of the documents or matters subject to inspection or examination.

Main stages

9. What are the main stages of typical court proceedings?

Starting proceedings

A claim is started by submitting a complaint to the court. After submission, the complaint is subject to review for compliance with formalities and, if necessary, amended. The complaint normally contains substantive argument and is filed with evidence.

Notice to the defendant and defence

The court serves the complaint on the defendant by a special type of mail service (*tokubetsusotatsu*). The claimant or its agent cannot personally serve the complaint on the defendant.

If the address of the defendant is unknown, or other exceptional circumstances exist, the court can serve the complaint by posting it on a notice board in court (*kouji soutatsu*) (*Articles 110 and 111, CCP*). The complaint is deemed served on a defendant in Japan two weeks after the posting, and on a defendant in a foreign country six weeks after the posting (*Article 112, CCP*).

The defendant must submit an answer in response to the complaint within a period set by the court in a notice of summons to the first hearing date and demand for an answer, which is served together with the complaint. The deadline is usually set about one week before the first hearing date, which is usually about four to six weeks from the service of the complaint.

Subsequent stages

Hearing date. The hearing is open to the public. The parties submit briefs and produce evidence. If the defendant does not appear in court at the first hearing date, and also does not submit an answer, the defendant is considered to have admitted the allegations in the complaint, unless the complaint was served by way of posting (*kouji soutatsu*) (*Article 159, CCP*).

Preparatory proceedings. The court has preparatory proceedings to clarify and ascertain material issues and evidence. These issues are generally identified through several exchanges of briefs and evidence, followed by court hearings. The proceedings are generally closed to the public.

Obtaining evidence. This includes the following:

- **Interrogatories.** A party can send interrogatories to the other party on matters necessary for the requesting party to present its case (*Article 163, CCP*). The party to whom the request is addressed can refuse to answer the questions if the questions are one of the following:
 - not specific;
 - insulting;
 - repetitive;
 - for the purpose of obtaining opinions of the requested party;
 - unduly burdensome to answer; or
 - subject to privilege or confidentiality (*see Question 17*).
- The party has a duty to answer the questions, but there are no formal penalties for failure to answer them. However, failure to answer can be taken into consideration by the court and adversely affect that party's position.
- **Request of research to a government or civil organisation.** The court can, at its discretion or at a party's request, request a local or foreign government body, an academic institution, a chamber of commerce or other organisation that has expertise on matters at issue, to conduct any necessary research and answer questions (*Article 186, CCP*).

Rights of appeal

The respondent can file an appeal against an interim order with the same court that issued the interim order either by:

- Filing an objection (*hosen igi*) in order to have the court reconsider its finding of the claimant's rights to the relief requested and the necessity of the preliminary injunction (*Article 26, the Civil Preservation Act (CPA)*).
- Filing a petition for cancellation of the interim order (*hosen torikeshi*) due to the claimant's failure to file a main action within a certain period of time set by the court (*Article 37, CPA*), a change in circumstances (*Article 38, CPA*), or other special circumstances (*Article 39, CPA*).

There are no time limits for an appeal. The appeal does not automatically result in a stay of the interim order. The respondent must file a separate petition for a stay, and the standard for the stay to be granted is generally very high.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

Preliminary attachment (*kari sashiosae*) is available to secure the enforcement of a monetary judgment. This order prevents the respondent from disposing of its assets. The court grants preliminary attachment if it considers that the claimant has presented prima facie evidence of the claimant's rights to be secured and the necessity of the preliminary attachment.

Prior notice/same-day

The court generally orders preliminary attachment without prior notice to the respondent. However, it can order notice and an opportunity to be heard at its discretion, if it considers it necessary and reasonable.

Technically, it is possible to obtain preliminary attachment on the same date as the application, but in practice, it is rare. A preliminary attachment order can be obtained within a week if the case is not complex and the claimant has submitted sufficient evidence in good time.

Main proceedings

Preliminary attachment proceedings are separate from proceedings on the merits, and the petition for preliminary attachment can be filed in the appropriate division of the court which has jurisdiction over the main proceedings (which may be different from the division that has jurisdiction over the main proceedings) or with the court that has jurisdiction over the property to be attached.

Preferential right or lien

Attachment creates a preferential right or lien in favour of the claimant over the attached assets. If and when a claimant obtains a winning judgment in the main proceedings, the claimant is entitled to payment from the attached assets before any third party who obtains a right to the attached assets after the attachment.

Damages as a result

The claimant is liable for damages suffered as a result of the attachment. In practice, the court generally requires the claimant to provide security, to protect the respondent from these damages.

Security

As stated above, the court generally requires the claimant to provide security. The court determines the amount of the security by taking into consideration all of the relevant factors, including the nature of the dispute and the value of the assets to be seized.

14. Are any other interim remedies commonly available and obtained?

When multiple claims are at issue in a single litigation, and part of them is not disputed by the parties or the parties have already exhausted their arguments on that part of the claims, the court can give judgment for that part before giving judgment for the rest of the claims (*Article 243, CCP*). The court can also, at its discretion, separate the oral proceedings (*Article 152, CCP*) relating to that part of the claims and give judgment for that part independently from the rest of the claims. Such judgment is given to mitigate the complexity of litigation with multiple legal issues, and to facilitate the litigation by focusing on the material issues.

FINAL REMEDIES

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

The types of remedies available in commercial disputes are:

- **Judgment (*kyufuhanketsu*).** This judgment orders a defendant to do or not do a certain act. This type of remedy includes payment of damages, specific performance, permanent injunction, eviction and restitution.
- **Declaratory judgment (*kakunin hanketsu*).** This judgment:
 - declares a certain right or legal relationship at issue between the parties; and
 - includes a judgment on whether one party has liability to the other.
- **Formative judgment (*kessel hanketsu*).** This judgment creates a new right or legal relationship between the parties. This type of remedy is available only if the law specifically allows it, and includes, for example, revocation of a shareholder's resolution.

Punitive damages are not allowed in Japan, and punitive damages awards from other jurisdictions are not enforceable. The standard of proof for damages is whether it is highly likely that the plaintiff suffered the damages. Once it is shown that it is highly likely that damages have been suffered, the quantification of those damages must be established by a reasonable method.

EVIDENCE

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Document discovery in Japan is very limited, and broad and extensive document requests are not permitted. However, a party can file a petition to order the other party or a third party to produce a certain document(s) (*Article 221, CCP*). On filing of the petition, the party must specify (*Article 221, CCP*):

- The title of the document.
- A summary of the document.
- The holder of the document.
- The fact to be proved.
- Grounds for the document holder's duty to submit the document.

The eight High Courts in Japan (Tokyo, Osaka, Nagoya, Fukuoka, Sapporo, Takamatsu, Sendai and Hiroshima) each deal with appeals from the District Court judgment within its territory. (For the IP High Court in Tokyo, see *Question 3*.)

An appeal must be submitted to the original District Court. If an appealing party does not describe the reasons for appeal in the notice of appeal, the party must submit a brief with this description within 50 days of filing the appeal.

In addition to hearing appeals from District Court judgments, the Tokyo High Court has special and exclusive jurisdiction over appeals from:

- Decisions by the Japan Fair Trade Commission (JFTC) (relating to anti-trust violations).
- Decisions by the High Marine Accident Inquiry Agency (relating to maritime disputes).

The High Court considers the facts subject to appeal and determines the applicable law based on the arguments and evidence presented both in the District Court and in the High Court. Fresh evidence can be presented to the High Court. In this respect, the High Court conducts an appeal as if the District Court's proceedings were re-opened and continued.

Grounds for appeal

The grounds for appeal of a district court's judgment are broad: error of fact or law, or both. The court of appeal is a court of second instance, where, in effect, the trial from the lower court is continued.

The grounds for appeal to the Supreme Court are limited to the following:

- An alleged misinterpretation or any other contravention of the Constitution in the judgment.
- The composition of the court rendering the judgment.
- A judge, who was prohibited by law from doing so, participated in the judgment.
- A breach of the provisions relating to exclusive jurisdiction.
- There existed some defect in the authorisation of the legal representative or advocate.
- A breach of the provisions relating to a public hearing.
- The judgment did not give reasons for the decision, or the reasons given are inconsistent.

Even if none of the grounds for appeal to the Supreme Court exists, a party can file a petition for *certiorari* (that is, an order by a higher court directing a lower court, tribunal, or public authority to send the record in a given case for review) if the judgment contradicts the precedent of the Supreme Court or if the case involves an important matter relating to interpretation of laws or ordinances.

Time limit

The party wanting to appeal generally has two weeks from receiving the judgment to file the appeal. If a party does not appeal within two weeks, the judgment becomes final and binding.

The period from filing an appeal to a judgment depends on the nature of the case, but normally is about half the time of district court proceedings. For example, according to the recent statistics provided by the Supreme Court of Japan, it took about six to seven months for the High Court, and nine to ten months for the IP High Court to complete the appellate court proceedings.

CLASS ACTIONS

21. Are there any mechanisms available for collective redress or class actions?

There is no class action system as used in some common law countries. However, multiple claimants can file a claim jointly if they have common rights or obligations in issue or they have the same factual basis or causes of action (*Article 38, CCP*).

Also, multiple claimants or defendants can authorise a part of the claimants or defendants respectively to proceed with litigation and wait for the outcome without substantially participating in the litigation (*Article 30, CCP*). However, the scope of the parties bound by the outcome is limited to those who proceeded with the litigation and those who authorised them to do so (this is more limited than in the US).

In 2007, a consumer class action system was introduced allowing a consumer entity accredited by the Prime Minister to seek an injunction to prevent certain acts harmful to consumers without authorisation by individual consumers for the benefit of consumers in general. The acts harmful to consumers subject to consumer class action include:

- Making any untrue statement of a material fact.
- Making a definite statement in relation to matters that may vary in the future.
- Omitting to state a material fact necessary to determine whether to enter into a contract.
- Inserting a clause in a consumer contract releasing a business entity from liability for any damage under a contract.
- Making a false representation that a product or service is significantly better than it is.

This consumer class action can lead to an injunction but damages are not available as a remedy.

As of January 2015, there were twelve consumer entities accredited by the Prime Minister, and the District Court granted a consumer entity injunction for the first time in 2009.

COSTS

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Generally, the successful party's costs are not fully reimbursed by the unsuccessful party.

Attorneys' fees

Each party must pay its own attorneys' fees, and the unsuccessful party is generally not liable to pay the successful party's attorneys' fees. However, if the successful party claims its attorneys' fees as part of its damages under contract, in tort or in a derivative suit, and the court orders the payment, the unsuccessful party must pay them. The court does not often order the payment of the attorneys' fees, and even when it does, the payment is normally limited to "reasonable" attorneys' fees, which usually covers only a part of the actual fees.

Other litigation costs

The unsuccessful party is liable to pay other litigation costs, such as stamp (filing) fees, postage and witnesses' travel expenses (*Article 61, CCP*), unless the successful party delayed, or conducted unnecessary activities in, the proceedings (*Articles 62 and 63, CCP*). If each party partly loses, the court apportions the litigation

signatory of the Hague Convention on Civil Procedure (see Question 27).

There are three methods of obtaining evidence from a witness in Japan for use in foreign proceedings:

- Request a Japanese court through the MoFA to obtain evidence under the Hague Convention on Civil Procedure, for example, through letters rogatory (that is, a formal request to a foreign court). This method can only be used if the foreign country is party to that Convention. Under the Convention, the District Court that has jurisdiction over a witness obtains evidence from the witness.
- Request a Japanese court to obtain evidence under a bilateral agreement or with approval from the Japanese government secured through diplomatic channels on a case-by-case basis. The District Court that has jurisdiction over a witness obtains evidence from the witness.
- Obtain evidence at the foreign country's consulate in Japan under a bilateral agreement. For example, under the US-Japan Consular Convention, a deposition can be taken from a willing witness for use by a court in the US, if the deposition is both:
 - presided over by a US consular officer under a court order or commission; and
 - conducted on the US consular premises.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

A foreign judgment is recognised if it is final and satisfies all of the following requirements (*Article 118, CCP*):

- The foreign court had jurisdiction over the case based on Japanese law or a treaty to which Japan is a party.
- The process was duly served on the unsuccessful party, or the unsuccessful party voluntarily answered the complaint.
- The foreign judgment and the foreign court proceedings are not incompatible with public policy in Japan.
- The foreign country recognises a similar judgment rendered in Japan (reciprocity).

To enforce a foreign judgment in Japan, the successful party must obtain an enforcement judgment in the court in Japan which has jurisdiction over the unsuccessful party or its assets. The enforcement judgment is granted if the foreign judgment is final and satisfies the above four requirements (*Article 24, Civil Execution Law*).

One Tokyo District Court case established reciprocity between Japan and England and Wales (*31 Jan 1994, HanreiJihou 1509-10*). This judgment is not an established precedent, but the judgments of courts in England and Wales are likely to be enforceable, provided the three other requirements above are satisfied.

ALTERNATIVE DISPUTE RESOLUTION

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

Main ADR methods

ADR methods in Japan include arbitration, mediation, conciliation and, broadly, negotiation. The ADR providers include courts, and

administrative and civil organisations. The Law on the Promotion of the Use of Alternative Dispute Resolution (ADR Law) was enacted in 2004 and became effective on 1 April 2007. This law aims to ensure fair and efficient ADR mechanisms by limiting ADR providers to only those who are certified by the government.

Arbitration is the most frequently used ADR mechanism to resolve large commercial disputes. The new Arbitration Law, which is based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law) and which was passed to encourage arbitration, became effective in 2004. As a result, arbitration has become more popular, particularly in relation to large international commercial disputes. However, in practice, arbitration is still uncommon.

Other methods of ADR are not frequently used to settle large commercial disputes in Japan. Court-annexed mediation, which is mandatory as a first instance for family disputes and certain rent disputes, is rarely used successfully for large commercial disputes. This is partly because court-annexed mediation is generally considered inappropriate for complex business transactions or IP disputes.

Applicable procedures and rules

The key principles under the Japan Commercial Arbitration Association (JCAA) Commercial Arbitration Rules 2006 (CAR) applicable to large commercial disputes include the following:

- A petition to start arbitration proceedings must be submitted to the JCAA with the relevant application fees (*Article 14*).
- Unless otherwise agreed by the parties, the number of arbitrators is one (*Article 24*).
- The arbitral tribunal must give the parties sufficient opportunity to present their cases (*Article 32*).
- The arbitration proceedings and the records are confidential (*Article 40*).
- The arbitral tribunal can take interim measures at a party's request (*Article 48*).
- The arbitral tribunal must render an award within five weeks after closing of the hearing. It can extend the period to eight weeks if necessary, depending on the complexity of the case and other factors (*Article 53*).
- The arbitral award is final and binding (*Article 54*).

The new Arbitration Law sets out procedural rules, but if the parties specifically agree on other procedural rules (for example, JCAA's CAR or ICC arbitration rules), the selected rules override the Arbitration Law, and the Arbitration Law acts only to fill any gaps.

Japan is a signatory state to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). An arbitral award in Japan can, therefore, effectively be enforced in a foreign country that is also a signatory state, and a foreign arbitration award from another signatory state can be effectively enforced in Japan.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

As ADR is based on the parties' agreement, it generally only applies if the parties agree to it. However, the law requires that certain disputes, such as family disputes and certain rent disputes, be first submitted to mediation before going to court. In addition, one of the judges in litigation often informally tries to mediate a settlement of the dispute at a later point in the proceedings, after the material issues are well understood.

ONLINE RESOURCES

The Supreme Court of Japan

W www.courts.go.jp

Description. The Supreme Court of Japan provides the database of a variety of court cases, including labour, IP and administrative cases decided by a district court, a high court and the Supreme Court, in Japanese. Not all the cases decided by a court are uploaded on the database, but all the JP cases are available on the database. It also provides the database of English translations of the Supreme Court cases.

Japanese law translation database system.

W www.japaneselawtranslation.go.jp/rel_info

Description. The Ministry of Justice provides the database of Japanese laws and regulations and their English translations. A user can search relevant laws and regulations with key words. The database contains up-to-date information. The English translations are available for guidance only.

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Languages. Japanese, English

商品取引の基本契約書

〇〇株式会社(以下「甲」という)と△△株式会社(以下「乙」という)とは、甲の製造する商品の売買に関し、次のとおり契約を締結する。

[This is a contract between ___ Corp. ("Party A") and ___ Corp. ("Party B") for Party A to sell the goods it manufactures to Party B. "Party A" ["Kō"] and "Party B" ["Otsu"] is a standard naming convention.]

第1条(目的)

乙は甲より次の製品(以下「本件商品」という)を購入し、これを乙の顧客に販売するものとする。

1. ○○○○
2. △△△△

Instead of stating the purpose of the agreement in the recitals, it is common to have a "Purpose" clause such as this that defines the goods or services covered by the agreement. In this template it says, "Party B will purchase the following products (hereinafter the "Products") from Party A and sell them to Party B's customers."

第2条(個別契約の成立)

1. 甲乙間の本件商品に関する個々の売買契約(以下「個別契約」という)は、乙の申込に対し甲が承諾したときに甲乙間に成立するものとする。
2. 前項の申込と承諾は、それぞれ注文書および請書をもって行い、甲が請書を発送した時点で個別契約が成立するものとする。
3. 甲が、前項の注文書が到達後、〇日以内に異議を申し出ない場合は、乙の注文書の内容を承諾したものとみなす。
4. 甲および乙は、個別契約において、甲乙協議のうえ、本契約と異なる定めをすることができるものとし、その場合には個別契約が本契約に優先するものとする。

ISSUES FOR U.S. LAWYERS:

- What's the consideration for this agreement?
 - Is the contract illusory?
- Section 2 (Formation of Individual Contracts) provides that the actual product orders will be made through individual purchase orders (POs). A PO is formed only if Party A consents to a PO issued by Party B.

第3条(売買価格)

本件商品の売買価格は、甲乙協議のうえ、別途、定めるものとする。

Section 3 (Sales Price) states that the prices of the Products will be set forth separately based on discussions by the parties.

第4条(納品・検査方法)

本件商品の納品・検査方法については、甲乙協議のうえ、別途、定めるものとする。

Section 4 (Method of Delivery and Inspection) is another agreement to agree and set forth the terms separately.

第5条(所有権の移転) [Transfer of Ownership]

本件商品の所有権は、甲が乙に本件商品を引渡したときに乙に移転するものとする。

第6条(危険負担) [Assumption of Risk]

天災地変等の不可抗力その他当事者の責めに帰すべからざる事由による本件商品の滅失・毀損については、本件商品の引渡しまでは甲の負担とし、引渡し以後は乙の負担とする。

第 14 条(秘密保持)[Confidentiality]

甲および乙は、本契約および個別契約に関して知り得た営業上、技術上の秘密を、第三者に開示または漏洩してはならない。

第 15 条(損害賠償)[Indemnification]

甲または乙が本契約または個別契約の条項に違反し、他の当事者に損害を与えたときは、違反した当事者は、損害を被った当事者に対し、その損害を賠償するものとする。

第 16 条(期限の利益の喪失)[Grounds for Immediate Payment]

1. 甲または乙において次の各号の一に該当したときは、当該当事者は相手方からの何らの通知催告を要せず、本契約および個別契約により相手方に対して負担する一切の債務について期限の利益を喪失し、直ちに債務全額を支払うものとする。

1. 本契約または個別契約の条項に違反したとき
2. 自ら振り出し、または裏書した手形または小切手が 1 通でも不渡処分を受けたとき
3. 租税公課の滞納処分を受けたとき
4. 自らの債務不履行により、差押、仮差押、仮処分等強制執行を受けたとき
5. 破産、会社更生、民事再生の手続開始の申し立てをなし、またはこれらの申し立てがなされたとき
6. 解散、合併、会社分割または事業の全部または一部の譲渡を決議したとき
7. 監督官庁から営業取消、営業停止等の処分を受けたとき
8. 財産状態が悪化し、またはそのおそれがあると認められる相当の理由があるとき

2. 前項に基づいて本契約が解除されたときは、帰責事由の存する当事者は、他の当事者に対し、本契約の解除により他の当事者が被った損害を賠償するものとする。

第 17 条(契約解除)[Termination]

1. 甲または乙は、相手方が前条2号ないし8号の一に該当したときは何らの通知催告を要せず、直ちに本契約および個別契約の全部または一部を解除することができるものとする。
2. 相手方が本契約または個別契約の条項に違反し、相当の期間を定めて履行を催告したにもかかわらず、当該期間内に履行しないときも前項と同様とする。
3. 前 2 項に基づいて本契約が解除されたときは、帰責事由の存する当事者は他の当事者に対し、本契約の解除により他の当事者が被った損害を賠償するものとする。

第 18 条(不可抗力免責)[Force Majeure]

天災地変、戦争・内乱・暴動、法令の改廃・制定、公権力による命令・処分、労働争議、輸送機関・通信回線の事故、原材料・運賃の高騰、為替の大幅な変動その他当事者の責めに帰すことのできない不可抗力による契約の全部または一部の履行遅滞、履行不能または不完全履行については、当該当事者は責任を負わない。

January 20, 2015 6:12 am JST

Welcoming entrepreneurs

Japan to ease visa rules for foreigners launching businesses

TOKYO -- The government will relax visa requirements for foreigners hoping to start businesses in Japan, part of an effort to boost investment in the country.

A foreigner hoping to launch a business must register a company first in order to obtain a visa to live here. But a company cannot be registered without a residency certificate, which requires a visa. While a foreigner can get a visa by having someone in Japan register the company, the registration procedure is virtually impossible to complete alone.

New rules taking effect in April will let foreigners submit documentation of an intent to form a business, such as articles of incorporation, in lieu of a registration certificate.

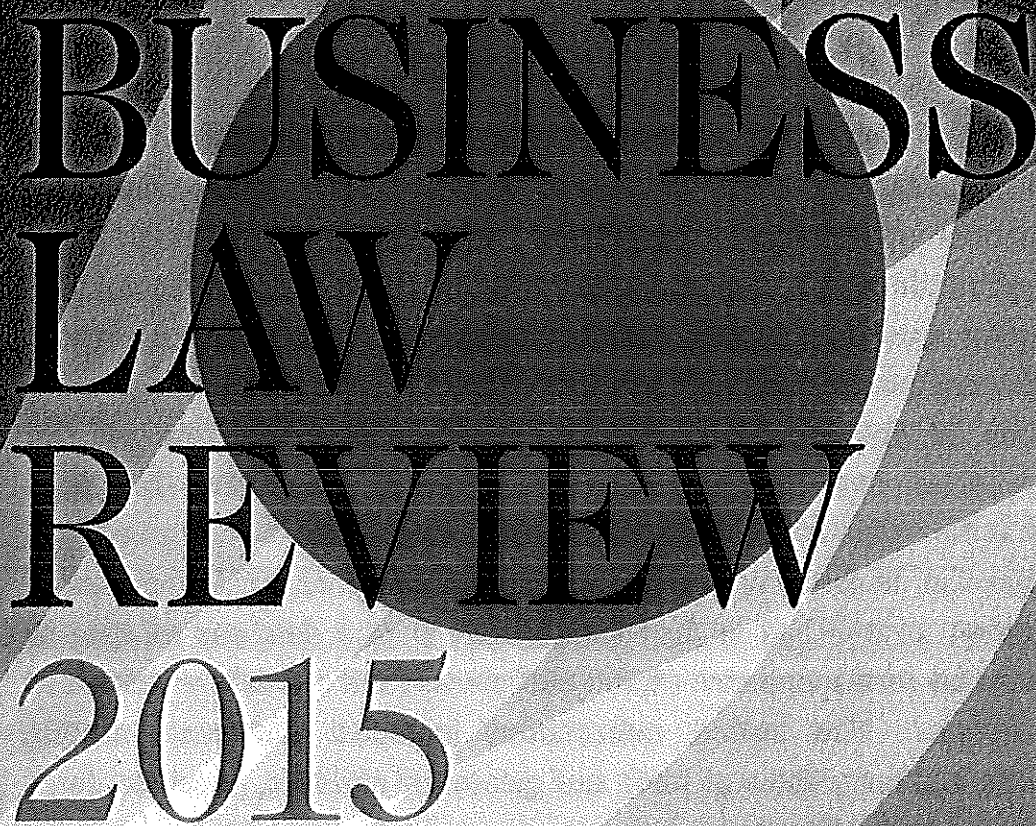
The government will also create a new four-month visa for these would-be entrepreneurs given that a residency certificate can be issued only to a foreigner entitled to stay longer than three months. Three-month visas are the shortest visas now available to them.

When foreigners seek to renew visas, the government plans to approve long-term stays if they can show progress toward starting a business, such as establishing a company. Visas for entrepreneurs will be available for one-, three- and five-year periods in addition to three and four months.

The government's growth strategy calls for boosting foreign direct investment in Japan to 35 trillion yen (\$295 billion) in 2020, double the tally at the end of 2012.

(Nikkei)

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A stylized sunburst graphic with multiple overlapping, semi-transparent rays emanating from a central dark circle. The rays are light gray and create a sense of depth and movement. The background is a dark, textured gray.

BUSINESS LAW REVIEW 2015

**Practical Legal Guide to Japanese Business Laws by Lawyers in fore front.
Act on Prohibition of Private Monopolization and Maintenance of Fair Trade**

information including those of children have been leaked. Many parents and other persons have expressed their anxiety about such and questioned how such breach could occur. Benesse needs to promptly investigate the cause, prevent further leakage of information, and do its best to prevent any reoccurrence and try to recover customer confidence." Chief Cabinet Secretary Suga also made similar comments and said that a bill for amending the Act on the Protection of Personal Information would be presented to the ordinary session of the Diet next year.

Benesse held a press conference in Tokyo and announced that it would set up and prepare a compensatory fund of 20 billion yen as way of apology to its customers by offering gifts, reducing tuition fees, etc. and other various measures to those affected by the breach. This incident sent a very important message to Japanese corporations to ensure that there are adequate and rigorous measures in place for protecting personal information. Corporations can often obtain significant business opportunities by collecting, accumulating and using personal information, but at the same time, leakage of such personal information often harms consumer confidence and gives material damage to both corporations and consumers alike.

General consumers have substantially raised their awareness of the need for the protection of privacy while unexpectedly receiving direct mails, soliciting telephone calls from unknown companies and seeing and hearing on a daily basis reports in the news about incidents of information being leaked. Consciousness of society about privacy issues has certainly been changing, and it is no exaggeration to say that society will become a place in which only those corporations willing to protect the privacy of an individual can survive.

Moving forwards into such an era, the Act on the Protection of Personal Information will be amended next year for the purpose of properly managing personal information. It is imperative and also the most important theme for corporations doing business in Japan to understand the trend of the amendment of the Act, to comply with the Act

The trend of the revision under the Act includes the definition of “personal information” protected under the Act as personal data substantially enabling the identification of a specific individual, and clarification of such data on the basis of the basic principle of protection of privacy.

Also, “sensitive data” or extremely private data will include new types of data to be handled according to their nature.

As for the handling of personal data in a field requiring highly professional knowledge (including types of information deemed to contain many sensitive data), related organizations will consider such based on their knowledge and judgment.

After the revision, companies handling personal information will need to review whether all the personal information in their possession falls under the category of the newly clarified definition of “personal information” or not. Also, they will need to handle personal information categorized as “sensitive data” in accordance with the revised law.

Business operators handling personal data subject to the obligation under the Act

Business operators handling personal data subject to the obligation of protection under the Act (hereinafter the “Operators”) are those managing the personal data of more than 5,000 persons in their business activities. Therefore, private individuals and small-scale entrepreneurs are exempted from the restrictions of the Act.

The privacy of a person is not influenced by the volume of data but by the nature of the data handled by the Operators. Therefore, the trend of the revision under the Act is considering abolishing the requirement of personal data of fewer than 5,000 persons in a personal information database owned by Small Operators exempted from restrictions by the Act as well as reducing the burdens on Small Operators.

After the revision, Small Operators which have been exempted from

Matters considered for change in promoting international harmonization

Matters under consideration include improving the environment in which Japanese enterprises may smoothly and globally develop their business, the manner in which Japanese laws and regulations are applied to overseas enterprises and cooperation by third party agencies in the international enforcement of laws and regulations.

As business globalization advances, the need for appropriate protection of personal information crossing national borders has increased. Other considerations also include restricting the transfer of data to countries with less developed personal data protection systems by maintaining the balance between preventing the obstruction of global usage and distribution of data and the protection of privacy.

APEC established the APEC Information Privacy Principles in 2004, and has since been recommending that the APEC economies establish domestic systems to protect personal information in line with the Principles. In addition, on April 28, 2014, the Government of Japan received approval, following the United States and Mexico, to join the APEC Cross-Border Privacy Rules (CBPR) System, a framework under which measures to protect personal information in any cross-border transfer of data by enterprises or other entities in the APEC region are certified if such measures are in conformity with the APEC Information Privacy Principles.

In the next step of the process, APEC will approve Japan's Accountability Agent, which will certify enterprises or other entities' measures to protect personal information in any cross-border transfer of data under the system. Companies and enterprises handling personal information which are certified by the Accountability Agent will be able to facilitate their business activities in APEC regions by obtaining a certificate of CBPR to show that their handling of personal information is compliant with the APEC Principles. According to an officer in charge of this matter at the Ministry of Economy, Trade and Industry, there has been



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LANGUAGES

Japanese and English

2016 Tax Reform Proposal

Issue 116, December 2015

In brief

On 16 December 2015, the Liberal Democratic Party and Komeito approved the 2016 Tax Reform Proposal.

In order to revitalize the economy as well as target a return of the government deficit to a surplus by 2020, the 2016 Tax Reform Proposal aims to support profitable companies by continuing to lower the corporate tax rate while also continuing to expand the taxable base. To make up for the revenue loss from the tax rate reduction, several measures were included to expand the taxable base, including changes to depreciation methods and the withdrawal of some tax incentives. Similar to the 2015 Tax Reform, the 2016 Tax Reform Proposal includes not only changes to the national corporate tax regime but also changes to the local tax regime, in particular, size-based enterprise tax system.

In addition, several measures are included to stimulate local regions and to seek to minimize the growing economic gap between urban and rural areas. Transfer pricing reporting requirements are also updated to reflect measures outlined by the OECD in Action 13 of the BEPS (Base Erosion and Profit Shifting) final report, recently released in October 2015.

The proposed tax law changes will be submitted to the Diet during January 2016 for review and debate; though these proposals are widely expected to pass without significant change in March 2016.

In detail

1. **Summary**
2. **Principal corporate tax changes**
 - (1) Reduction of corporate tax rates
 - (2) Expansion of the tax base
 - (3) Limitation on net operating loss deductions
 - (4) Depreciation methodology
 - (5) Review of tax incentives
 - (6) Local tax revisions
3. **Small and Medium Enterprises (SMEs)**
4. **Other corporate tax related reforms**
 - (1) Corporate reorganizations
 - (2) Contributions-in-kind
 - (3) Director's equity compensation
 - (4) Other
5. **Regional revitalization efforts**
 - (1) Local hub incentives
 - (2) Local government contributions
 - (3) National Strategic Zones

1. Summary

Continuing on from the 2015 Tax Reform, the main objective of the 2016 Tax Reform Proposal is to implement the second stage of *Abenomics*, in particular, to enhance the economic recovery by stimulating the corporate competitiveness of Japanese companies with further reductions in the corporate tax rate, while at the same time seeking to improve the government deficit by a series of base broadening measures.

The effective corporate tax rate of 32.11% is scheduled to fall further in two stages: first to 29.97% in 2016, and then 29.74% in 2018. An increase to the size-based component of enterprise tax, as well as allowing only straight-line depreciation on selected assets, together with the scheduled expiration of tax incentives on investments for productivity growth, are all part of the efforts to increase the taxable base.

The 2015 revisions to net operating loss carryforwards as well as to the sized-based component of enterprise tax are further revised in 2016. The taxation of small and medium sized enterprises (SMEs) and not-for-profit organizations however remain as they were.

The regional revitalization efforts introduced in 2015 to assist in a shift of Japan's economic concentration away from Tokyo have also been expanded.

The consumption tax increase remains on schedule to rise to 10% on April 1, 2017; however, concessions have been introduced with lower rates for selected goods to lessen the burden for the lower income tax brackets. To cope with the multiple consumption tax rates, an invoicing method will be introduced, although not until April 1, 2021 with transitional measures in place for the four year interim.

Finally, based on the recommendations of Action 13 of the final BEPS report issued in October 2015, new reporting obligations for transfer pricing documentation will be implemented.

2. Principal corporate tax changes

(1) Reduction of corporate tax rates

From fiscal years beginning between April 1, 2016 and March 31, 2017, the national corporate tax rate will be reduced from 23.9% to 23.4%, followed by a further rate reduction from April 1, 2018 to 23.2%.

Furthermore, the tax rate relating to the income portion of size-based enterprise tax will be reduced from 4.8% to 3.6% for fiscal years beginning on or after April 1, 2016.

The effective tax rate for large corporations should be reduced from 32.11% (33.06% in the Tokyo Metropolitan area) to 29.97% (30.86% in the Tokyo Metropolitan area) from April 1, 2016 and then to 29.74% (30.62% in the Tokyo Metropolitan area) for fiscal years beginning on or after April 1, 2018.

(3) Limitation on net operating loss deductions

The changes in the limitation for the net operating loss deduction will be implemented in three steps, i.e., the rate will decrease by 5% annually, and ultimately reduced to 50% in FY2018. However, the expiry period of losses will be extended from 9 to 10 years for losses incurred on or after fiscal years beginning on or after April 1, 2018.

		FY 2015	FY 2016	FY 2017	FY 2018
Limitation ratio for large corporations	Current	65%		50%	
	Proposed	65%	60%	55%	50%
Carryover period for loss utilization as well as assessment by tax authorities and request for downward adjustment by taxpayer (assuming loss period financial documentation is maintained)	Current	9 years		10 years	
	Proposed	9 years			10 years (Note 1)

(Note 1) Applicable to tax losses incurred in fiscal years beginning on or after April 1, 2018.

(4) Depreciation methodology

For selected structural improvements acquired on or after April 1, 2016, only the straight line method will be permitted with the declining balance accelerated depreciation method no longer be allowed. Companies in the mining industry as an exception can however elect either the production basis or the straight line depreciation methods.

Asset Type	Asset Acquisition Date			
	From April 1, 1998	From April 1, 2007	From April 1, 2012	From April 1, 2016
Buildings	Straight Line Method	Straight Line Method		
Structures and Attachments to buildings	Straight Line or Declining Balance Methods	Straight Line or 250% DB Methods	Straight Line or 200% DB Methods	Straight Line
Equipment and machinery, vehicles, ships, aircraft				Straight Line or 200% DB Methods
Assets used in Mining	SL, DB, or Units-of-production Methods	SL, 250% DB, or Units-of-production Methods	SL, 200% DB, or Units-of-production Methods	Straight Line or Units-of-production Methods
				SL, 200% DB, or Units-of-production Methods
Intangible Assets	Straight Line Method	Straight Line Method		
Foreign Leases	Straight Line	Straight Line over life of lease		

(5) Review of tax incentives

In line with the 2015 Tax Reforms, a number of tax incentives were examined and allowed to lapse with their scheduled expiry dates or were cancelled altogether.

		Before 2015 reforms	Current (2015 reform)	Proposed
Fiscal year beginning		April 1, 2014	April 1, 2015	April 1, 2016
Value added base		0.48%	0.72%	1.2%
Capital base		0.2%	0.3%	0.5%
Income base (Note 1)	≤4 million yen	3.8% (2.2%)	3.1% (1.6%)	1.9% (0.3%)
	4 million yen <, ≤ 8 million yen	5.5% (3.2%)	4.6% (2.3%)	2.7% (0.5%)
	8 million yen <	7.2% (4.3%)	6.0% (3.1%)	3.6% (0.7%)
Local corporate special tax (the rate is multiplied by the income base of size based enterprise tax) which is collected as national tax by filing corporate tax returns		67.4%	93.5%	414.2% (Note 2)

Note 1: The rate shown for the income base is the total income based tax including (a) the portion collected as part of the national tax return and (b) the portion included as part of the enterprise tax return. The portion in parentheses of the income base column shows the amount collected as enterprise local tax (where the difference is collected as a national tax). The above rate changes for income base may not affect taxpayers who have elected consolidated taxation since consolidation is not applicable for local tax purposes.

Note 2: The local corporate special tax will be abolished from April 1, 2017, and replaced with an increase to the enterprise tax rate.

(b) Phased increase in corporate enterprise tax

From April 1, 2016 to March 31, 2019, there will be phase-in period for the enterprise tax increase for companies with a value added base of less than JPY 4B: a portion of the tax increase compared to pre-tax reform year (March 31, 2016) will be available as a deduction.

Value added base	Amount to be deducted from enterprise tax in the event of an increased burden		
	Fiscal years from April 1, 2016	Fiscal years from April 1, 2017	Fiscal years from April 1, 2018
Less than JPY 3B	Tax Increase (Note) X 75%	Tax Increase X 50%	Tax Increase X 25%
Over JPY 3B and up to JPY 4B	Fixed portion of tax increase (max 75%)	Fixed portion of tax increase (max 50%)	Fixed portion of tax increase (max 25%)

Note: The tax increase is equal to that year's corporate enterprise tax less the corporate enterprise tax calculated by the pre-tax reform year (March 31, 2016) rates.

(c) Local corporate tax and inhabitants tax revisions

For fiscal years beginning after April 1, 2017, the local corporate tax rate will increase, and the inhabitants tax will decrease as follows:

	Current		Expected from 2017	
	Standard Rate	Maximum Rate	Standard Rate	Maximum Rate
Prefectural Tax Portion	3.2%	4.2%	1.0%	2.0%
Municipal Tax Rate	9.7%	12.1%	6.0%	8.4%
Local Corporate Tax Rate	4.4%		10.3%	

to foreign place of business, excluding real estate or real estate interests, or mining, extraction in Japan.

Under the 2016 Tax Reform Proposal, the treatment of the following transfers has been revised:

Transferring Entity	Receiving Entity	Asset	Tax qualification status
Domestic corporation	Foreign corporation	Japan domestic real estate, real estate interests, mining, or extraction right or assets or liabilities attributed to domestic place of business	Currently not qualified ⇒Transfers of domestic assets fully to the Japanese permanent establishment (PE) of a foreign corporation to be qualified (on condition that it is not expected that certain domestic assets are expected to be transferred to foreign head office)
Foreign corporation	Foreign corporation		
Domestic corporation	Foreign corporation	Assets or liabilities other than the above	Currently qualified ⇒ Transfer of foreign business assets (which were transferred from Japanese head office within one year before the contribution in kind, excluding cash, inventory, securities) to an office other than the Japanese PE of a foreign corporation to be non-qualified
Foreign corporation	Foreign corporation		Currently qualified
Foreign corporation	Domestic corporation	Assets and liabilities attributed to foreign place of business (excluding Japan domestic real estate or real estate interests, mining, or extraction)	Currently not qualified
Foreign corporation	Foreign corporation		Currently qualified ⇒Transfers of foreign business assets to the Japan PE of a foreign corporation to be non-qualified

(3) Director's equity compensation

- ① Corporations remunerating individuals with restricted shares in return for the provision of future services will be able to deduct the cost on the date of vesting. This treatment will apply to restricted shares granted by corporate resolutions on or after April 1, 2016.
- ② Remuneration by corporations to directors in the form of restricted shares will not require advance notice to claim a corporate deduction.
- ③ Clarification to be provided on the deductibility of director bonuses linked to certain performance metrics, such as return on equity.

(4) Other

- ① The disallowance of entertainment expenses (excluding allowance of 50% meals and drinks) from corporate deductions has been extended for 2 years.
- ② Net operating loss carrybacks not available to corporations other than SMEs are extended for 2 years.

- ② Under the Specified Assets Test, renewable energy facilities which meet certain conditions can be included as “certain assets” for fiscal periods ending on and before 10 years after the date of leasing the facility. This period is to be extended to 20 years.
- ③ Certain technical changes will impact the calculation of the 90% dividend deductibility test (i.e., the amount of dividend payments made by a J-REIT in a fiscal year must exceed 90% of its distributable profit in that same fiscal year).

(4) Other

Interest on cash collateral received by offshore investors on certain OTC derivatives is currently exempt from Japanese withholding tax. The scope of OTC derivatives that are eligible for the interest withholding tax exemption is proposed to be widened upon revisions to the applicable securities law, the Cabinet Office Ordinance on Financial Instrument Firms Association, etc.

7. International Tax

(1) Japan – Taiwan agreement on tax matters

On 26 November 2015, the de facto diplomatic organizations representing both Japan and Taiwan completed negotiations on a comprehensive income tax agreement. Along with treating residents and domestic corporations the same in each jurisdiction, the following items were also agreed:

<ul style="list-style-type: none"> • Residency tie-breaker rules • Income to Taiwan residents to be nontaxable for income and corporate tax purposes <ul style="list-style-type: none"> (1) Business income to be nontaxable for income and corporate tax purposes (assuming no PE) (2) Dividend taxation to be decreased (dividends taxed at 10%, interest nontaxable) (3) Capital gains to be nontaxable (4) Provision of personal services to be nontaxable • Arbitration measures to be put in place for transfer pricing • Special measures on the downward requests in case of the confirmation of the tax authorities • Information exchange measures
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(2) Transfer pricing documentation

In October 2015, the OECD released the final BEPS reporting package with Action 13 relating to transfer pricing and related documentation. Taking into consideration the compliance costs for taxpayers along with increased transparency, the 2016 Japan Tax Reform Proposal requires the following documentation in order to adhere with the with the BEPS project:

Document	Required Information	Submission Deadline	Applicability
Country-by-Country Report	Country revenue, pre-tax income, taxes payable, etc.	Must be e-filed within 1-year of the last fiscal day of the ultimate parent	Applicable for fiscal year of the ultimate parent entity beginning on or after April 1, 2016
Master File	Group company structure, business outline, financial conditions, etc.		
Local File	Transfer pricing documentation	By due date of tax return, to retain for 7 years	Applicable for corporate tax in fiscal years beginning on or after April 1, 2017

(3) CFC regime

As Japanese companies endeavor to expand their overseas activities and competitiveness, the 2015

In response to the increase in consumption tax rate to 10% from April 1, 2017, lower consumption tax rates on certain goods will be introduced. Also, in response to the multiple tax rates, an invoice system will be introduced from April 1, 2021. In the four year transitional period to the introduction of an invoice system, several measures will be implemented.

The lower consumption tax rate of 8% will still apply to food (excluding when purchased in restaurants) along with newspaper subscriptions where there is at least an issue twice per week. Until the invoice system is introduced, the credit for consumption taxes paid will follow the current method for tracking, where the lower tax rate on applicable items should be indicated in the invoice. With the increased administration cost of tracking the different rates, the simplified method of determining consumption taxes paid will be allowed.

After the new invoice system is introduced, qualified invoices issued by the registered businesses (Note 1) should be maintained for claiming credits of consumption taxes paid.

(Note 1) Businesses (other than exempt entity) will need to file an application with their tax office to become qualified, for issuing qualified invoices indicating details such as the business registration number, the applicable tax rate, etc.

(2) SME directed measures

For consumption taxpayers other than those applying the exemption or simplified taxation method, high valued transactions as defined will trigger a disallowance from using either the simplified method or being consumption tax exempt for a taxpayer after the following transactions:

Transaction	Period for which exemption or simplified method not applicable
Any inventory or adjusted real property transaction in which the value is JPY 10M or more	3 years starting from the beginning date of taxable period in which the transaction takes place
Building construction expenses totaling JPY 10M or more	3 years starting from the beginning date of taxable period in which the construction completes

The above changes will be applicable to high value assted transactions on or after April 1, 2016 unless the contract for that asset was finalized by December 31, 2015.

(3) B2B digital services

With the 2015 Tax Reform, consumption taxes are now applicable on digital services based on the location of the recipient of those services. From January 1, 2017, the sourcing of B2B digitally provided services will be based on the following:

Transaction	Sourcing
Where a Japan domestic business with a foreign branch office receives a digital service or product, and that transaction is only for the purpose of the foreign business	Foreign (out of scope of consumption tax)
Where a foreign business has a Japan branch, and the digital service or product is provided in Japan only for the purpose of the domestic business	Domestic (consumption tax applicable)

- ④ The following have been extended for two years:

- Long term capital gain rates applied to purchase or exchanges on qualified residences;
- Carryforward provisions for capital losses incurred on purchase or exchanges of qualified residences; and
- Carryforward provisions for capital losses incurred on sales of qualified residences

11. Tax Procedural

(1) Increase in penalties

- ① Penalty taxes (underreporting of income, failure to file, and failure to pay withholding tax) for an amended tax return or payment of withholding tax before expectation of the assessment under audit is either 0% or 5%. With the 2016 Tax Reform Proposal, the underreporting of income and failure to file penalties will change as described below after an audit notice has been received:

	Return filed or Payment made before audit notice	Return filed or Payment made after audit notice received but before expectation of assessment		Return filed or Payment after start of audit and assessment expected
		Current	Proposed (Note 1)	
Underreporting Penalty	0%	0%	5%, 10%	10%, 15%
Failure to File Penalty	5%	5%	10%, 15%	15%, 20%
Failure to Pay withholding tax	5%	5%		10%

(Note 1) For the scope excluded by the tax audit such as a transfer pricing audit or tax audit on certain consolidated member company, an amended return relating to tax which is out of scope of the current audit will not have the increased penalty rates applied. It will not apply to voluntarily amended inheritance or gift tax returns as a result of split of inherited estate.

The proposed changes will apply to both national and local taxes for which the filing date will fall on or after January 1, 2017.

- ① In the event of fraud or concealment of facts, the failure to file penalty (15%, 20%) and the heavy penalty tax (35%, 40%) will be increased by 10% for taxpayers who have already been assessed these penalty taxes within the past 5 years.

The proposed changes will apply to both national and local taxes for which the filing date will fall on or after January 1, 2017.

- ② Following the December 12, 2014 Supreme Court decision on inheritance tax with regards to the delinquency tax on amended returns (in the case, downward correction was made by the tax authorities after the tax return filed, then upward correction was followed), the following will apply to both national and local taxes for which the filing due date will fall on or after January 1, 2017:
- The delinquency tax will not be applied (on the portion paid with the original return) from the date of payment to the date of increased tax via assessment or amended tax return; and
 - Penalty tax will not be applied (on the portion paid with the original return) on amended tax returns increasing the tax due.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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