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Japan
Doing Business In

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Japan.

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Japan: Doing Business In

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The legal system of Japan is based on civil law. Past judicial decisions, that is, so-called "case law", do not have a binding effect on subsequent cases, however, since Japanese courts nevertheless tend to follow past judicial decisions in similar cases, case law also holds significant importance in practice.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

In Japan, there are four types of companies: joint stock company (*kabushiki kaisha*), limited liability company (*godo kaisha*), general partnership company (*gomei kaisha*), and limited partnership company (*goshi kaisha*). The key characteristic of joint stock companies and limited liability companies is the limited liability of their shareholders and members to their capital contributions. In contrast, in the case of general partnership companies, all members of the company are jointly and severally liable, without limitation, for the debts and obligations of the company. In the case of limited partnership companies, at least one member must be liable for the debts and obligations of the company with the other members having limited liability. Due to this advantage in terms of the limited liability of their shareholders and members, joint stock companies and limited liability companies are more widely used in Japan.

The difference between a joint stock company and a limited liability company is in their management structure. In a joint stock company, ownership and management are generally separated, with the shareholders owning the company and the directors of the company managing the business of the company. In contrast, in a limited liability company, the members themselves have authority to operate the business of the company.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

A foreign entity can continuously carry on business directly without establishing a subsidiary company in Japan. However, when a foreign entity intends to engage in business in Japan continuously, it must designate its representative(s) in Japan (at least one of whom must reside in Japan) and register with the Japanese authorities as a foreign company. A foreign entity cannot continuously conduct business in Japan until it has completed such registration.

4. Are there are any capital requirements to consider when establishing different entity types?

No capital requirement exists for any of the four types of companies described in Q2. A joint stock company and a limited liability company can be established with a minimum capital of one Japanese yen, and a general partnership company and a limited partnership company can be established without any capital. However, it should be noted that in order for a foreign national to obtain residency status (visa) to engage in the management of the company, the amount of stated capital or total contributions of the company must be no less than 5 million Japanese yen (otherwise, at least two full-time staff must be employed by the company).

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

A joint stock company is normally established by way of so-called "incorporation by promoters" (*hokki setsuritsu*) under which one or more promoters subscribe for all of the shares in the company to be issued at the time of incorporation. In this case, the procedures for the establishment are typically carried out in the following steps:

- Establishment of Articles of Incorporation: promoter(s) prepare and sign the Articles of Incorporation of the company and have the document notarized by a notary public.
- Capital contribution: promoter(s) pass promoter resolutions with respect to the shares to be issued upon incorporation of the company and the subscription payment details etc., and make payment

and subscribe for shares in accordance with the resolutions.
- Appointment of initial director(s): promoter(s) pass the promoter resolutions to appoint the initial director(s) of the company, and the initial director(s) check the capital contributions and the procedures of incorporation.
- Application for registration of incorporation: an application for registration of incorporation of the company is filed with the local Legal Affairs Bureau having jurisdiction over the location of the head office of the company. The company is deemed to be incorporated when this application is filed.

The other types of companies referred to in Q4 are established through procedures similar to those of a joint stock company, although there are some minor differences (e.g., notarization of the Articles of Incorporation is unnecessary).

A joint stock company (*kabushiki kaisha*) is the most-often used company type for conducting business in Japan. For this reason, the answers to the following questions only discuss a joint stock company, and unless otherwise indicated, in answers to the following questions, the word "company" refers to a joint stock company.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

A joint stock company is required to have general shareholders meetings and at least one director as its minimum governance structure, although the company may also choose to have other governance bodies such as a board of directors ("**BOD**").

In the case of a company without a BOD, each director is responsible for managing the corporate affairs and acts as a representative of the company. If a company without a BOD has two or more directors, the corporate affairs of the company are decided by a majority of the directors. However, since the general shareholders meeting of a company without a BOD has the ultimate authority to decide all affairs of the company, the director(s) are bound by all resolutions that the general shareholders meeting adopts.

In the case of a company with a BOD, the corporate affairs of the company are, in general, managed by the representative director(s) appointed by the BOD from the directors of the company. In terms of decision making, certain important matters must be decided by a resolution of the BOD and may not be delegated for a specific director to decide. A general shareholders meeting of a company with a BOD may not resolve matters other than those for which a resolution of a general shareholders meeting is required under the Companies Act or the Articles of Incorporation.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

A joint stock company must have at least one director, and a company with a BOD must have three or more directors.

All directors must be natural persons, and a person who has been sentenced for certain crimes is disqualified from acting as a director for specified periods of time. There are no residency or nationality requirements to become a director.

Regarding shareholders, there is no qualification requirements for a shareholder, so anyone (either natural persons or legal entities) can become a shareholder, regardless of the number, local residency or nationality of the shareholders.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

From a corporate law perspective, there are no restrictions on expanding business operations in Japan, and an entity is free to work with trade /commercial agents or resellers. However, it should be noted that imposing restrictions on transactions by agents or resellers (e.g., restriction on resale price) may be prohibited under applicable laws (such as the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade of Japan).

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they

apply.

The Japanese Corporate Governance Code is applicable only to listed companies, and there are no equivalent rules for privately owned companies or groups of companies.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The typical means of providing funds to a company within a group are shareholder loans and capital injections through the issuance of new shares. There are also various other means of financing available when including funding from outside the group, such as borrowing from financial institutions, increasing capital through the issuance of shares to third party investors and the issuance of corporate bonds.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

The typical method of returning the profits of a company to its shareholders is the distribution of dividends from surplus.

The amount available for distribution is calculated based on the balance sheet of the company at the end of the latest fiscal year with certain adjustments taking into account any subsequent changes. Within the limits of the distributable amount, a joint stock company can issue dividends multiple times during a fiscal year. Decisions regarding the distribution of dividends are, in general, made by the general meeting of shareholders. However, the Articles of Incorporation may stipulate that such decisions be made by the board of directors if certain requirements related to the governing structure of the company are met. While cash is the typical form of dividend, distribution in kind (i.e., non-cash assets such as shares of another company) is also possible.

Another method commonly used for returning profits to shareholders is for the company to purchase its own shares from the shareholder(s) for value. The purchase by the company of its own shares can be carried out by entering into an agreement with the shareholders for the purchase of their shares in the company and obtaining approval to the purchase from the general shareholders meeting. Like dividends, this form of profit return cannot exceed the distributable amount. When acquiring own its own shares only from specific shareholder(s), a super majority resolution at a general shareholders meeting is required and certain procedures to protect the other shareholders must be followed.

12. Are specific voting requirements / percentages required for specific decisions?

There are three types of resolutions of a general shareholders meeting of a joint stock company: simple majority vote, super majority vote, and special majority vote.

A simple majority vote requires a majority of the votes from shareholders present at the meeting, provided a majority of eligible voting shareholders are present. As a quorum, the presence of shareholders holding a majority of the exercisable voting rights is necessary, however, this quorum requirement can be removed by the Articles of Incorporation. Resolutions at general shareholders meetings are generally made by a simple majority vote, unless other types of resolutions are required by law or in the Articles of Incorporation.

A super majority vote requires a two-thirds majority the votes of shareholders present at the meeting. As a quorum, the presence of shareholders holding a majority of the exercisable voting rights is necessary, although the Articles of Incorporation can lower this quorum to one-third. Super majority resolutions are required for matters significantly important for the company, such as amendment to the Articles of Incorporation, approval of mergers and other organizational restructurings, capital reductions, and dissolution of the company.

A special majority vote requires either (i) votes from at least half of the shareholders entitled to vote at relevant shareholders meeting (based on head-count) and a two-thirds majority the votes from such relevant shareholders (based on number of voting rights), or (ii) votes from at least half of all shareholders (based on head-count) and three quarters of the votes of all shareholders (based on number of voting rights). There is no quorum requirement for a special majority vote. Matters that have a significant impact on shareholders require special majority resolutions, for example, a resolution by (i) above is required when amending the Articles of Incorporation to impose restrictions on transferring shares and a resolution by (ii) above is required when amending the Articles of Incorporation to allow different treatment among shareholders.

13. Are shareholders authorised to issue binding

instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Since a basic principle of joint stock companies is the separation of ownership and management, shareholders are not supposed to issue instructions to directors of the company.

However, as mentioned in Q6, in the case of a company without a BOD, since the general shareholders meeting of a company has the ultimate authority to decide all affairs of the company, directors are bound by all resolutions that a general shareholders meeting adopts. In the case of a company with a BOD, the general shareholders meeting can only adopt resolutions for certain matters specified by law or the Articles of Incorporation, and thus cannot directly issue binding instructions to the management of the company beyond the scope of such expressly permitted matters. However, shareholders can still supervise the execution of company management by exercising certain shareholder rights, such as the right to request dismissal of directors, the right to claim damages against directors through shareholder derivative lawsuits, and the right to seek injunctions against directors for acts that violate laws or the Articles of Incorporation.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

In Japan, the rights of employees are protected under various employment-related laws, such as the Labor Standards Act.

As for protection from discrimination, while there is no overarching legislation that comprehensively prohibits all forms of discrimination, the Labor Standards Act prohibits discrimination in working conditions on the basis of nationality, creed, or social status, as well as gender-based wage discrimination. Moreover, the Act on Equal Opportunity and Treatment between Men and Women in Employment mandates equal treatment and opportunities for men and women in employment matters such as hiring, placement, promotion, and retirement.

Regarding working conditions, under the Labor Standards Act, the standard working hours are in general required to be 40 hours per week and 8 hours per day, excluding break time (lunch and tea breaks etc.), at maximum. To have employees work beyond these standard working hours or on public holidays, employers are required to enter into a labor-management agreement regarding limits on overtime and holiday work (often referred to as a "**36 Agreement**") with employee representatives or the labor union representing a majority of employees at the relevant workplace. Moreover, upon entering into a 36 Agreement, the company is required to file it with the local Labor Standards Inspection Office.

Minimum wages that employers can pay to their employees are prescribed by the municipal authorities in each prefecture. For example, the minimum wage applicable in Tokyo is 1,113 Japanese yen per hour as of March 2024. Any provision in an employment contract that sets wages below the prescribed minimum wage limit is void and the prescribed minimum wage is applied to such contract.

Furthermore, employers are obliged to provide annual paid leave of at least 10 working days, either consecutively or divided, to employees who have worked continuously for six months from their employment start date and have been present for at least 80 percent of the total working days. The period of annual paid leave increases based on the duration of continuous employment up to a maximum paid annual leave of 20 working days.

As for dismissal protection, please see Q15.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

In order to dismiss an employee who has been employed under a permanent employment contract, there must be objective and reasonable grounds to justify the dismissal and the dismissal must be considered appropriate from the perspective of general social standards. The cases where such grounds for dismissal have been generally recognized are categorized into the following: (i) lack of competence of the employee, (ii) violation of disciplinary rules by the employee, or (iii) necessity of the dismissal for management of the company (e.g., redundancy). However, in practice, it can be difficult to dismiss an employee if the employee challenges the validity of the dismissal because the employer bears the burden of proof for demonstrating that there were objective and reasonable grounds for the dismissal and the Japanese courts and employment authorities tend to scrutinize the justification of the dismissal stringently.

As to the procedures for dismissal of an employee, in general, the employer must give at least 30 days' prior notice or make a payment in lieu thereof to the employee

in an amount of no less than the average salary for 30 days of the employee. If the internal employment rules of the company stipulate additional procedural requirements (e.g., prior consultation with the employee or the labor union of the company), the employer must also follow such procedures.

In the case of collective dismissal of numerous employees, there is no direct cause for dismissal on the part of employees and the dismissal primarily results from circumstances on the part of the employer. Therefore, for a collective dismissal to be considered valid (i.e., in determining whether objective and reasonable grounds exist and if the dismissal is appropriate from the perspective of general social standards), the following four factors are taken into account: (i) the necessity to reduce the number of employees for the company, (ii) whether any measures have been taken to avoid dismissal, (iii) the reasonableness of the selection of the employees subject to the dismissal, and (iv) the appropriateness of the procedures (such as whether sufficient consultations have been held with the subject employees).

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

In Japan, there are no general rules regarding employee representation or participation rights like those found in Europe. However, in certain situations, a representative of the employees must be elected by a majority of employees at the workplace and designated to represent them vis-a-vis the employer. For example, an employee representative must be elected for negotiations and entry into a labor-management agreement (e.g., 36 Agreement) with the employer, if there is no labor union to which a majority of employees are members at the relevant workplace. Also, when an employer changes its internal employment rules applicable to a workplace of a certain size and there is no labor union with majority employee membership at such workplace, the employer must consult with the employee representative and obtain his/her opinion regarding the change to the internal employment rules.

Employees may freely establish and join a labor union without obtaining any approval from governmental authorities or the employer. Labor unions are guaranteed the rights to collective bargaining and collective action, allowing them to seek to improve working conditions and the workplace environment of the company.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

The Penal Code of Japan prohibits the provision of or offer or promise to provide bribes to public officials or those who are to be appointed a public official (including those who are deemed to be public officials under other laws).

In addition, in order to implement the OECD Anti-Bribery Convention domestically, the Unfair Competition Prevention Act stipulates the crime of bribery of foreign public officials. This prohibits the provision of money or other benefits to foreign public officials in order to make any wrongful gain. Amendments to the Unfair Competition Prevention Act came into force on April 1, 2024, which increase the maximum amount of the criminal fine and also expand the scope of prohibition to make bribery committed by foreign employees of Japanese companies overseas illegal.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

There are some laws that stipulate what are generally considered economic crimes. For example, fraud, counterfeiting of currencies, bribery, breach of trust, and embezzlement are specified as crimes in the Penal Code, and insider trading and market manipulation are specified as crimes in the Financial Instruments and Exchange Act.

In general, there are no obligations to report such crimes to the authorities.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Any person who is engaged in certain specified businesses (e.g., the business of financial institutions) is obliged to identify their customers and to create and store certain specified records when entering certain transactions and to report any suspicious transactions. In addition, money laundering (i.e., obtaining the control over the management of corporations by using criminal proceeds, concealment or receipt of criminal proceeds,

etc.) is punishable, and any criminal proceeds are subject to being forfeited to the authorities. Furthermore, financial providers of terrorists are subject to punishment, and the assets of terrorists can be frozen.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Rules on supply chains have not yet been established as law in Japan, however, in September 2022, the Government of Japan formulated the "Guidelines for Respect for Human Rights in Liability Supply Chains" to encourage Japanese companies to respect human rights in group companies and suppliers.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Joint stock companies must prepare financial statements (meaning balance sheets, profit and loss statements, statement of changes in shareholders' equity, etc. and notes to nonconsolidated financial statements) and business reports as well as supplemental schedules thereof for each fiscal year.

At companies with statutory auditors, the financial statements, business reports, and supplemental schedules thereof must be audited by the statutory auditors.

Such financial statements must, in general, be approved by or reported to the shareholders of the joint stock company as described in Q23, and the joint stock company must give public notice of the balance sheet without delay after the conclusion of the applicable ordinary general meeting of shareholders.

In contrast, while a limited liability company is obliged to prepare and retain financial statements, it is not obliged to give public notice of the same.

22. Please detail any corporate / company secretarial annual compliance requirements?

Listed companies must submit an annual securities report within three months after the end of each fiscal year. The annual securities report must include important matters concerning the accounting of the company, details of the company's business, and necessary and appropriate matters for protecting the public interest and investors.

It should be noted that even unlisted joint stock companies (but not unlisted limited liability companies) are required to give public notice of financial statements as explained in Q21.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Joint stock companies are required to convene an ordinary general meeting of shareholders within a certain period after the end of each fiscal year. The Articles of Incorporation of many joint stock companies provide that they must hold an ordinary general meeting of shareholders within three months after the end of the fiscal year.

At such ordinary general meeting of shareholders, the financial statements of the company must be approved by the shareholders and the contents of the business report must be reported to shareholders. However, if an accounting auditor provides an unqualified opinion on the financial statements and certain other conditions are met, the approval of financial statements by the shareholders' meeting is not necessary and, instead, it is sufficient to only report the details of the financial statements to shareholders.

Other matters typically approved at ordinary general meetings of shareholders are: (i) the appointment of directors and statutory auditors (when the terms of these officers expire at the time of such ordinary general meeting of shareholders), (ii) distribution of dividends, and (iii) determination of remuneration of directors and statutory auditors.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

There is no legal requirement for Japanese companies to report, notify, or disclose the beneficial owner(s) or a UBO, however, financial institutions are obliged to identify the UBO of its customers if the customer is a corporation.

For this reason, a joint stock company may voluntarily prepare and submit a list of its UBO to the Legal Affairs Bureau, in which case, the Legal Affairs Bureau will issue

a copy of such UBO list with certified language upon being requested to do so by the company.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

The main taxes that businesses are subject to in Japan are corporation tax, corporate inhabitant tax, corporate enterprise tax, local corporation tax, special corporate enterprise tax and consumption tax.

(1) Corporation tax

Corporation tax is a national tax levied on corporate income. The tax rate is typically 23.2%, but a rate of 15% or 19% can apply depending on the amount of stated capital and corporate income and the type of corporation etc.

(2) Corporate inhabitant tax

Corporate inhabitant tax is a local tax consisting of a corporation levy and a per capita levy. The corporation levy is levied on the amount of corporation tax and the tax rate is typically 7%. The per capita levy amount is a fixed amount and varies depending on such matters as the amount of stated capital and the number of employees of the corporation.

(3) Corporate enterprise tax

Corporate enterprise tax is a local tax levied on corporate income and the tax rate is typically 7%. However, certain corporations such as those having a stated capital of more than JPY 100,000,000 are subject to corporate enterprise tax on a pro forma basis, which consists of a per income levy, per value-added levy and per capita levy.

(4) Local corporation tax

Local corporation tax is levied on the amount of corporation tax and the tax rate is 10.3%.

(5) Special corporate enterprise tax

Special corporate enterprise tax is a national tax levied on the amount of the per income levy of corporate enterprise tax and the tax rate is typically 37%.

(6) Consumption tax

Consumption tax is levied on the transfer or lease of assets, or the provision of services in Japan. The main tax rate is 10%, however a reduced rate of 8% is applied to the transfer of goods such as food, beverages and newspapers. Consumption tax on taxable purchases is creditable from the consumption tax to be paid to the government.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Japanese tax law has many tax incentive regimes for businesses and they are mainly provided in the Act on Special Measures Concerning Taxation. For example, there are, among others, R&D tax incentive regimes which allow corporations to credit a certain proportion of research and development expenses, tax incentive regimes that allow corporations to credit a certain amount of increased salary payments, and tax qualified share option rules which allow employees to be subject to income tax at the time of the sale of shares rather than at the time of the exercise of the share option.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

In cases where a non-resident of Japan receives dividends from a Japanese corporation, the dividend amount is basically subject to withholding tax under Japanese domestic tax law, however, such withholding tax can be reduced or exempted if a tax treaty is applicable.

In addition, the Foreign Exchange and Foreign Trade Act of Japan may also apply. For further details, please refer to C10.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

In addition to personal income tax and corporate income tax, the following taxes should be taken into consideration.

Stump duties are levied on taxable documents as specified in the Stump Duties Act. The amount varies depending on the type of document and the amount(s) referred to in the document. In addition, in the case of acquisition of real property, real property acquisition tax and registration and license tax are imposed.

29. Are there any public takeover rules?

The tender offer rules under Japanese law are very complicated, but unless any of the exemptions (e.g., exercise of stock options, transactions within a group, acquisition by a parent) apply, if the target company is a corporation or other entity that is obliged to submit an annual securities report, a tender offer is typically required in the following instances:

i. a purchase of shares outside of any stock exchange market from more than ten (10) sellers within a sixty-one (61) day period and where, as a result of such purchases, the shareholding ratio of the acquirer exceeds five percent (5%);
ii. a purchase of shares outside of any stock exchange market where, as a result of such purchase, the shareholding ratio of the acquirer exceeds one-third (1/3); or
iii. a purchase of shares in excess of ten percent (10%) of the total voting rights of the target company during a three (3)-month period by way of purchases of shares or by way of the acquisition of newly issued shares (but only if such acquisition is in excess of ten percent (10%), which includes purchases of more than five percent (5%) of the shares made outside of the stock exchange market or through off-hour trading), and where, as a result of such purchases, the shareholding ratio of the acquirer exceeds one-third (1/3) (the "rapid acquisition" rule).

If the acquirer seeks to acquire two-thirds (2/3) or more of the voting rights of the target company, the acquirer is not permitted to set an upper limit and is required to acquire all of the tendered securities.

It should be noted that the amendments to the FIEA were passed on May 15, 2024, which will take effect by May of 2026. Following these amendments, a purchase of shares through on-market transactions will be subject to the mandatory tender offer, the above-mentioned 1/3 threshold will be lowered to 30%, and the "rapid acquisition" rule will be eliminated, while a series of transactions aiming to ultimately acquire more than 30% of the voting rights of the target company may be subject to the mandatory tender offer even after the elimination of the "rapid acquisition" rule.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

In Japan, (i) an acquisition of shares, (ii) merger, (iii) joint incorporation-type or absorption-type demerger, (iv) joint share transfer, or (v) an acquisition of business, which satisfies the relevant turnover threshold, must be notified to the Japan Fair Trade Commission (JFTC). The waiting period is 30 days from the date of acceptance by the JFTC of the notification (which may be shortened by the JFTC upon request from the parties). If the JFTC issues a report request during such waiting period requiring one or more of the parties to the transaction to submit additional materials or information, the JFTC review will continue after the expiration of such 30 day waiting period. If the JFTC determines that there is a competition problem arising from the transaction, normally the remedies are negotiated between the parties and the JFTC and if the parties cannot present a remedy acceptable to the JFTC, the parties will typically decide to not continue with the transaction.

31. Is there an obligation to negotiate in good faith?

Based on the principle of freedom of contract, generally the parties can freely decide whether or not to enter into a transaction. However, in exceptional cases, a party entering into negotiations may be liable for damages incurred by the other party if such party acts in bad faith against reasonable expectation of the other party.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

In the event of an acquisition by way of transfer of shares, the existing employment relationships within the target company will remain unchanged even after completion of the acquisition of the target company (unless the target company and its employees separately agree to alter the terms of the employment agreements).

In the event of a merger, the employment agreements between the disappearing company and its employees are automatically and directly succeeded to by the surviving company, and it is not necessary to obtain the individual consent of the employees for such succession of the employment agreements.

In the case of a company split, the default rule is that (i) the employment agreements of employees who are primarily engaged in the business to be succeeded to are

succeeded to by the successor company, and (ii) the employment agreements of the employees not falling under this category are not succeeded to by the successor company. It is possible to provide for a different effect in the company split agreement or company split plan, but in such case, any employees who are treated differently from the default rule may file an objection to the company and such employees must be treated in accordance with the default rule.

In the case of a business transfer, the consent of each employee who will be transferred to the company which receives the business under the transfer is necessary.

In each case, if there is any agreement with the employees such as a collective agreement, the employer must follow the steps agreed in such agreement.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

When a foreign investor makes an inward direct investment in an enterprise that operates in an industry for which prior notification is required, the foreign investor must submit a prior notification to the relevant Japanese authority through the Ban of Japan. In such cases, the inward direct investment may not be made until 30 days have passed from the date of receipt by the Bank of Japan of the prior notification (this 30 day period may be shortened by the relevant Japanese authority).

However, in cases where prior notification is not required, *ex-post facto* notification may often be required.

34. Does your jurisdiction have any exchange control requirements?

In Japan, foreign remittances and foreign exchange transactions can, in general, be performed freely. However, certain transactions, such as payments to any person or organization subject to sanctions, require prior permission from the Ministry of Finance.

In addition, making or receiving a remittance equivalent to more than JPY30 million is subject to a post-notification to the Ministry of Finance.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

The most common way to dissolve a joint stock company is dissolution by super majority vote (2/3 of the voting rights of the shareholders present unless higher percentage is required by the Articles of Incorporation) of the general meeting of shareholders.

When a company is dissolved by a resolution of the general meeting of shareholders, there are two types of liquidation possible: (i) regular liquidation and (ii) special liquidation.

Regular liquidation is used when the assets of the company are expected to be sufficient to enable the company to fully pay its debts. In the regular liquidation procedures, the company appoints a liquidator, the liquidator investigates the financial condition of the company, completes the current business of the company, liquidates the assets, collects unpaid claims and repays unpaid debts, and then distributes the residual assets to the shareholders.

Special liquidation is used when the company is or is suspected to be insolvent, in which case the liquidation is effected under the strict supervision of the court.

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